No. 10458

United States

Circuit Court of Appeals

For the Ninth Circuit.

Vol
2351

UNITED STATES OF AMERICA,

Appellant,

vs.

PORTLAND TRUST AND SAVINGS BANK, a corporation, Guardian of the Estate of William V. Mahoney, Incompetent,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United St
for the District of Oregon

FILED

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PAUL P. O'BRIEN,
CLERK

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UNITED STATES OF AMERICA,

Appellant,

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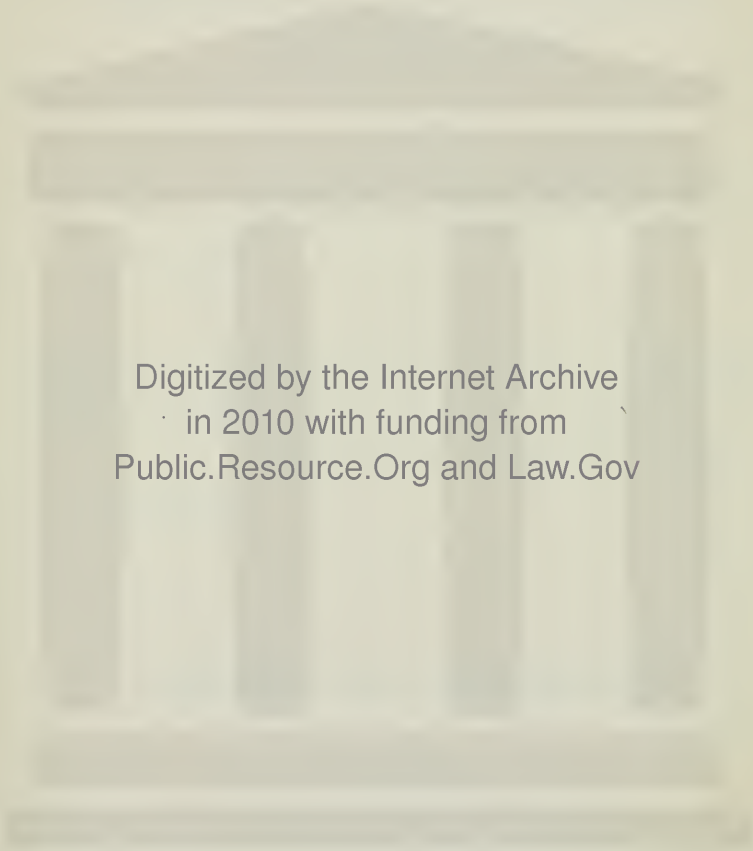
PORTLAND TRUST AND SAVINGS BANK, a corporation, Guardian of the Estate of William V. Mahoney, Incompetent,

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Page

Amended Pre-Trial Order 9

Amendment to Designation of the Parts of the Record to Be Printed on Appeal, Appellant's (CCA) 432

Answer 7

Answer by Jury to Interrogatories 14

Appeal:

- Certificate of Clerk to Transcript of Record on 422
- Designations of Record on:
 - Appellant's Additional (CCA) 430
 - Appellant's Amendment to (CCA) ... 432
 - Appellant's (CCA) 426
 - Appellant's (DC) 26
 - Appellee's (CCA) 428
 - Appellee's (DC) 29
- Notice of 23
- Order Extending Time to File Transcript of Record on 421
- Statement of Points on Which Appellant Intends to Rely on (CCA) 424
 - (DC) 24

Index Page

Certificate of Clerk to Transcript of Record on Appeal 422

Complaint 2

Designations of Record on Appeal:
Appellant's Additional (CCA)..... 430
Appellant's Amendment to (CCA)..... 432
Appellant's (CCA) 426
Appellant's (DC) 26
Appellee's Additional (CCA)..... 428
Appellee's Additional (DC)..... 29

Judgment 16

Motion to Set Aside Verdict and Judgment and for Judgment for Defendant..... 19

Names and Addresses of Attorneys of Record. 1

Notice of Appeal..... 23

Order Denying Motion to Set Aside Verdict and Judgment 22

Order Extending Time to File Transcript of Record on Appeal..... 421

Pre-Trial Order, Amended..... 9

Statement of Evidence..... 29

Exhibits for Defendant:

3—Certificate and Statement of Vocational Payments 395
8a—Statement of James E. Mahoney, Dated May 26, 1942..... 327

Index Page

Exhibits for Defendant (Continued):

10—Numerous Papers Including Statement of Insured's Wife, Copy of Physical Examination, Notes, Discharge Slip, etc....364-374

Exhibits for Plaintiff:

1—Report of Veteran's Examination (Medical Reports) 129-233
4—Material Portions—Certificate of Disability for Discharge, A.G.O. Record 101-128
10a—Commitment 281-291
10b—Notes of State Hospital at Salem, Oregon 292
12—Honorable Discharge from United States Army, May 31, 1923..... 98

Motion of Defendant to Dismiss Complaint 294

Motion to Dismiss and for Directed Verdict 397

Witnesses for Defendant:

Bailey, Clark
—direct 340

Birchfield, G. I.
—direct 348
—cross 355
—redirect 362

Index Page

Witnesses for Defendant (Continued):

Callahan, Blanche (Deposition)
—direct 306

Dunlap, George (Deposition)
—direct 310
—cross 314
—redirect 317

Ernest, F. J.
—direct 374
—cross 384
—redirect 391
—recross 392

Ferry, Creon G.
—direct 333
—cross 334

Hagland, E.
—direct 336
—cross 337

Mahoney, James Edward (Deposition)
—direct 318

McCammel, A. J.
—direct 341
—cross 344
—redirect 348

McGrath, T. M. (Deposition)
—direct 295

Index Page

Witnesses for Defendant (Continued):

Nelson, Nels O. (Deposition)
—direct 302

Rekdahl, M.
—direct 338
—cross 339

Swanson, Mrs. P.
—direct 329

Williams, Edgar E.
—direct 332

Witnesses for Plaintiff:

Abbott, A. E. (Deposition)
—direct 51
—cross 55

Donahue, Mrs. Frank (Deposition)
—direct 37
—cross 45
—redirect 50

Dooley, Walter C. (Deposition)
—direct 60
—cross 65

Evans, John C.
—direct 233
—cross 252
—redirect 263

Index Page

Witnesses for Plaintiff (Continued):

Finley, Knox H.
—direct 264
—cross 270
—redirect 280

Hennessy, J. A. (Deposition)
—direct 67
—cross 71

Mahoney, Mrs. Clara
—direct 30
—cross 34

Mahoney, Francis Patrick (Deposition)
—direct 82
—cross 87
—redirect 92

Mahoney, James Edward (Deposition)
—cross 94

Mahoney, John H. (Deposition)
—direct 72
—cross 79

Statement of Points Upon Which Appellant Intends to Rely on Appeal (CCA)..... 424
(DC) 24

Index Page

Transcript of Opening Statement of Defense Counsel, Court's Instructions to the Jury, etc. 397
Argument to the Jury by Counsel for Defense 400
Instructions by the Court to the Jury.... 401
Opening Statement of Counsel for Defense 398

Verdict of the Jury..... 15

NAMES AND ADRESSES OF THE ATTORNEYS OF RECORD

For Appellant

CARL C. DONAUGH,

United States Attorney for the District of Oregon, and

J. MASON DILLARD,

Assistant United States Attorney for the District of Oregon,
United States Court House, Portland, Oregon, and

FRANCIS J. McGAN,

Attorney of the Department of Justice, Federal Building, Butte, Montana.

For Appellee

ALLAN A. BYNON and
GERALD J. MEINDL,
American Bank Building, Portland, Oregon.

In the District Court of the United States
for the District of Oregon November Term, 1941

Be It Remembered, That on the 19th day of November, 1941, there was duly filed in the District Court of the United States for the District of Oregon, a Complaint, in words and figures as follows to wit: [1*]

In the District Court of the United States
For the District of Oregon

Civil No. 923

PORTLAND TRUST AND SAVINGS BANK, a corporation, Guardian of the Estate of WILLIAM V. MAHONEY, Incompetent,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant.

COMPLAINT

Comes now the plaintiff and for cause of action against the defendant complains and alleges:

I.

That during all the times hereinafter mentioned the plaintiff, Portland Trust and Savings Bank, was, ever since has been and now is a corporation, duly organized and existing under and by virtue of the laws of the State of Oregon with its princi-

*Page numbering appearing at foot of page of original certified Transcript of Record.

pal place of business in the City of Portland, Oregon, and is duly qualified under and by virtue of the laws of the State of Oregon to act as administrators, executors and guardians, and said plaintiff is now the duly appointed, qualified and actings guardian of the above named William V. Mahoney, an incompetent and brings this action for and on behalf of the said William V. Mahoney, incompetent.

II.

That on the 15th day of July, 1917, William V. Mahoney, the above named insured, joined the military forces of the United States of America, and on the 22nd day of May, 1920, was honorably discharged from said forces. That after his entry into said forces the said insured applied for and received a policy of war risk insurance in the sum of $10,000.00, wherein and whereby the defendant agreed, in the event of total and permanent disability of the above named insured occurring while said policy of insurance was in force and effect, that the defendant would pay the above [2] named insured the sum of $57.50 per month for the above named insured's life, commencing on the date the said insured became permanently and totally disabled, in consideration of the premiums to be paid by him as made and provided by law, and that the said policy of war risk insurance was by the said insured kept in full force and effect by the payment of said premiums up to the 1st day of August, 1920, and by reason of the grace period said insurance

remained in force and effect up to and including the 31st day of August, 1920.

III.

That after insured's entry into the military forces of the United States, and while he was in the services of the said military forces of the United States of America, and while in line of duty, and while said policy was in full force and effect, the said insured, as a result of physical and mental disabilities, became permanently and totally disabled, and was so permanently and totally disabled upon the 22nd day of May, 1920, the date of his honorable discharge from said military forces of the United States of America and while the said policy was in full force and effect, in that he was at that time, ever since has been and now is and will ever be unable to follow continuously any substantially gainful occupation. The said conditions then existing were founded upon conditions reasonably certain to prevail throughout the said insured's lifetime.

IV.

That the said William V. Mahoney now is and has been insane and mentally incompetent on and continuously since the date of his honorable discharge, May 22, 1920, and was rated as incompetent and insane by the Veterans Administration on and prior to the 3rd day of July, 1931.

V.

Prior to the commencement of this action plaintiff made claim for and on behalf of the above

named incompetent to the Veterans Administration on the ground of said incompetent's permanent and total disability for the payments due on said policy of war risk insurance from the [3] date of said incompetent's honorable discharge for the term of his natural life, and that said incompetent be given a permanent and total disability rating from the date of his honorable discharge from the military forces of the United States of America, to-wit. May 22, 1920, and at all times subsequent thereto, but said defendant disagreed with plaintiff and denied plaintiff's claim, and has failed and refused, and now fails and refuses to pay the plaintiff the sums due it for and on behalf of the said incompetent under the terms of said policy. Further the defendant issued to the plaintiff, prior to the commencement of this action, a letter of disagreement denying plaintiff's claim.

Wherefore, plaintiff prays for judgment and for an order of this Court that the above named incompetent, William V. Mahoney, be adjudged to have been, on May 22, 1920 and at all times subsequent thereto totally and permanently disabled and prays for a judgment that payments be made to plaintiff, for the benefit of said incompetent, William V. Mahoney, under and pursuant to the terms and conditions of said incompetent's said war risk insurance policy, by the defendant.

ALLAN A. BYNON
GERALD J. MEINDL
Attorneys for Plaintiff [4]

State of Oregon,
County of Multnomah—ss.

I, Chester J. Irelan, being first duly sworn, on oath depose and say: That I am the duly appointed, qualified and acting Assistant Trust Officer of the Portland Trust and Savings Bank; that the Portland Trust and Savings Bank is the duly appointed, qualified and acting guardian of the person and estate of William V. Mahoney, incompetent; and that the foregoing complaint is true, as I verily believe.

PORTLAND TRUST AND SAVINGS BANK

By (Signed) CHESTER J. IRELAN
Assistant Trust Officer.

Subscribed and sworn to before me this 12th day of November, 1941.

(Sgd) GERALD J. MEINDL
[Notarial Seal] Notary Public for Oregon.
My commission expires July 25, 1944

[Endorsed]: Filed November 19, 1941. [5]

And Afterwards, to wit, on the 17th day of January, 1942, there was duly Filed in said Court, an Answer, in words and figures as follows to wit: [6]

[Title of District Court and Cause]

ANSWER

Now comes the defendant the United States of America, by Carl C. Donaugh, United States Attorney in and for the District of Oregon, and Francis J. McGan, Attorney, Department of Justice, and for its answer to the complaint filed by the plaintiff herein says:

I.

Defendant says it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph numbered I of the complaint and therefore denies the same.

II.

Defendant denies the allegations contained in paragraph numbered II of the complaint but in further answer thereto admits and alleges that william Vincent Mahoney enlisted in the military services of the United States of July 13, 1917, and was honorably discharged therefrom on May 22, 1920; that while in the military service, on December 7, 1917, he applied for and was granted a contract of war risk yearly renewable term insurance in the amount [7] of $10,000, premiums on which were paid to include the month of July 1920 but no premiums were paid thereafter.

III.

Defendant denies the allegations contained in paragraph numbered III of the complaint.

IV.

Defendant denies the allegations contained in paragraph numbere IV of the complaint.

V.

Defendant denies the allegations contained in paragraph numbered V of the complaint except that defendant admits and alleges that on July 28, 1941, a formal claim for insurance benefits, on Veterans Administration Forms 579 and 579a, was filed in the Veterans Administration by the Portland Trust and Savings Bank, as guardian of William Vincent Mahoney, wherein it was alleged that the insured became totally permanently disabled May 22, 1920; that said claim was denied by a decision of the Insurance Claims Council rendered November 3, 1941, notice of which was transmitted to the Portland Trust and Savings Bank, as guardian of William Vincent Mahoney, by registered letter of the same date.

Defendant denies each and every allegation contained in the complaint not specifically admitted herein and demands a trial by jury in this action.

CARL C. DONAUGH,
United States Attorney
By C. LAIRD McKENNA,
Assistant United States Attorney
FRANCIS J. McGAN
Attorney, Department of Justice.

[Endorsed]: Filed January 17, 1942. [8]

And Afterwards, to wit, on Thursday, the 10th day of December, 1942, the same being the 36th Judicial day of the Regular November, 1942, Term of said Court; present the Honorable James Alger Fee, United State District Judge, presiding, the following proceedings were had in said cause, to wit: [9]

[Title of District Court and Cause.]

AMENDED PRE-TRIAL ORDER

This cause came on regularly for pre-trial before the Court, Honorable James Alger Fee, Judge, presiding, the plaintiff being represented by its counsel, Bynon & Meindl, and the defendant being represented by its counsel, Honorable Carl C. Donaugh, United States Attorney for the District of Oregon; Honorable J. Mason Dillard, Assistant United States Attorney for the District of Oregon, and Honorable Francis J. McGan, Attorney for the Department of Justice;

This Pre-Trial Order is to supersede the Pre-Trial Order heretofore entered in this cause:

Whereupon the parties agreed that the Portland Trust and Savings Bank, a corporation, is the duly appointed, qualified and acting Guardian of the Estate of William V. Mahoney, Incompetent, and as such Guardian brings this action for and on behalf of the said William V. Mahoney, Incompetent;

The parties further agreed that the insured, William V. Mahoney, enlisted in the military service of the United States on July 13, 1917, and was honorably discharged therefrom on May 22, 1920; that

on December 7, 1917, the insured applied for and was granted a contract of War Risk Yearly Renewable Term Insurance in the sum of $10,000.00, wherein and whereby the defendant agreed, in the event the insured became permanently and totally disabled while said insurance policy was in full force and effect, to pay the insured the sum of $57.50 per month so long as he remained permanently [10] and totally disabled, in consideration of the premiums to be paid by the insured, as made and provided by law, and that the premiums on said insurance were paid to include the month of July, 1920, but no premiums were paid thereafter, and that by reason of the grace period said policy of insurance remained in full force and effect to and including the 31st day of August, 1920;

It was further agreed that the plaintiff herein, as Guardian of the Estate of William V. Mahoney, filed claim for insurance benefits with the Veterans Administration on Veterans Administration Forms 579 and 579a, July 28, 1941, alleging that the insured became permanently and totally disabled May 22, 1920, and that said claim was denied by a decision of the Insurance Claims Council of the Veterans Administration, dated November 3, 1941, and that notice of said denial was dispatched to the plaintiff herein as Guardian of William V. Mahoney by registered mail, November 3, 1941;

Defendant denies that the insured, as a result of physical and mental disabilities, became permanently and totally disabled the 22nd day of May, 1920, or at any time during the period of insurance

protection under the above-mentioned policy of War Risk Yearly Renewable Term Insurance, and further denies that the insured, William V. Mahoney, was insane and mentally incompetent on May 22, 1920, or that he has been continuously since said date insane or incompetent or that he was rated as insane or incompetent by the Veterans Administration on or prior to the 3rd day of July, 1931;

Therefore, the

QUESTIONS FOR DETERMINATION

are:

1. Was the insured insane or was said insured rated by the Veterans Administration as insane or incompetent on or prior to the 3rd day of July, 1931?

2. Has the Court jurisdiction to hear and determine this cause?

3. Did the insured become permanently and totally disabled as a result of physical and mental disabilities May 22, 1920, or at any time when his War Risk Yearly Renewable Term Insurance [11] was in full force and effect?

EXHIBITS

Defendant's Exhibits

Exhibit No. 1

File of Veterans Bureau examination reports. No objection.

Exhibit No. 2

Application for compensation, Form 526.

No objection.

Exhibit No. 3

Statement of compensation payments.

Objected to on the ground that it is incompetent, irrelevant and immaterial and pertains to compensation and not to matters in issue in this cause.

Plaintiff's Exhibits

Exhibit No. 4

A. G. O. Record.

Objection to those portions pertaining to or setting forth what was considered a percentage of disability at the time insured was discharged and prior thereto on the ground that those are conclusions of persons who are not produced for cross-examination and that they are in invasion of the province of the jury and can not bind the defendant in this case.

Exhibit No. 5

Deposition taken in Wilwaukee, Wisconsin.

John J. Mahoney.

Objection in deposition waived by both parties.

Exhibit No. 6

Depositions taken by plaintiff in Minneapolis, Minn.

J. A. Hennessy, Walter Dooley, A. E. Abbott.

Objections in deposition waived by both parties.

Exhibit No. 7

Deposition of sister of insured, taken in Portland, Oregon.

Mrs. Frank Donaheu.

Objections waived by both parties.

Exhibit No. 8

Deposition taken by defendant at Seattle, Washington.

George Dunlap, James E. Mahoney, Francis Patrick Mahoney.

Objections waived by both parties except as to Exhibit 8a. [12]

Exhibit No. 8-A

A letter.

Admission objected to by plaintiff in grounds stated in Exhibit No. 8.

Exhibit No. 9

Deposition taken by defendant at Minot, North Dakota.

T. J. McGrath, Nels O. Nelson, Blanche Callahan.

Objections waived by both parties.

Exhibit No. 10

Records of Oregon State Hospital, Salem, Oregon.

No objections.

Exhibit No. 11

Compensation Rating Sheet.

Objection by defendant on the ground that it tends to illustrate no issue in the case; is

hearsay, incompetent, irrelevant, and immaterial, and invades the province of the jury.

Exhibit No. 12

Honorable Discharge of William V. Mahoney. No objections.

This pre-trial order supercedes the pleadings and shall not be amended or changed during the trial except by consent or to prevent manifest injustice.

Dated at Portland, Oregon, this 10th day of December, 1942.

JAMES ALGER FEE
District Judge

Approved: Allan A. Bynon, and Gerald J. Meindl, Attorneys for Plaintiff. Daniel Dillon and Francis J. McGan, Attorneys for Defendant.

[Endorsed]: Filed December 10, 1942. [13]

And Afterwards, to wit, on the 12th day of December, 1942, there was duly Filed in said Court, answer by the jury to interrogatories in words and figures as follows, to wit: [14]

[Title of District Court and Cause.]

SPECIAL INTERROGATORIES

Interrogatory No. 1

Do you find from the evidence that the insured, William V. Mahoney, was insane on July 3, 1931?

Yes.

Interrogatory No. 2

Do you find from the evidence that the insured,

William V. Mahoney, was permanently and totally disabled May 22, 1920 or at any time when his War Risk Yearly Renewable Term Insurance was in full force and effect?

Yes.

Dated this 12th day of December, 1942.

HOLT STOCKTON
Foreman.

[Endorsed]: Filed December 12, 1942. [15]

And Afterwards, to wit, on the 12th day of December, 1942, there was duly Filed in said Court, a Verdict in words and figures as follows, to wit: [16]

[Title of District Court and Cause.]

VERDICT

We, the jury, duly impaneled and sworn to try the above entitled cause, do find in favor of the plaintiff and against the defendant, and find that the insured, William V. Mahoney, was, on the 22nd day of May 1920, and ever since has been totally and permanently disabled, and further find that the insured, William V. Mahoney, was, on the 3rd day of July 1931, and ever since has been and is now, insane.

Dated at Portland, Oregon, this 12th day of December, 1942.

HOLT STOCKTON
Foreman.

[Endorsed]: Filed December 12, 1942. [17]

And Afterwards, to wit, on Monday, the 14th day of December, 1942, the same being the 39th Judicial day of the Regular November, 1942, Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit:

[18]

In the District Court of the United States
for the District of Oregon

No. Civ-923

PORTLAND TRUST AND SAVINGS BANK, a corporation, Guardian of the Estate of WILLIAM V. MAHONEY, Incompetent,
Plaintiff,

vs.

UNITED STATES OF AMERICA,
Defendant.

JUDGMENT

This cause coming on for trial upon the 10th day of December, 1942, before the Honorable James Alger Fee, Judge of the above entitled Court, plaintiff appearing in person and by its counsel, Allan A. Bynon and Gerald J. Meindl, the defendant, United States of America, appearing by its counsel, Carl C. Donaugh, United States Attorney for the District of Oregon, and Francis J. McGan and Daniel Dillon, attorneys, Department of Justice, the jury having been duly impaneled and sworn to try said cause, the opening state-

ments of counsel having been made, witnesses having been sworn and heard, the closing arguments of respective counsel having been made, the jury, having been instructed by the Court, and having had submitted to it special interrogatories and forms of verdict, did on the 12th day of December, 1942, return its special interrogatories as follows:

"1. Do you find from the evidence that the insured, William V. Mahoney, was insane on July 3, 1931? Yes.

2. Do you find from the evidence that the insured, William V. Mahoney, was permanently and totally disabled on May 22, 1920 or at any time when his war risk yearly renewable term insurance was in full force and effect? Yes."

and said jury did on the said 12th day of December, 1942, return its verdict as follows: [19]

"We, the jury, duly impaneled and sworn to try the above entitled cause, do find in favor of the plaintiff and against the defendant, and find that the insured, William V. Mahoney, was, on the 22nd day of May, 1920, and ever since has been totally and permanently disabled, and further find that the insured, William V. Mahoney, was, on the 3rd day of July, 1931, and ever since has been and is now, insane.

Dated at Portland, Oregon, this 12th day of December, 1942.

HOLT STOCKTON
Foreman"

Now, Therefore, the Court, being advised in the premises and according to said findings on said special interrogatories and according to said verdict, does enter its judgment, and

It Is Ordered and Adjudged that the said William V. Mahoney was on the 22nd day of May, 1920, and ever since has been and now is permanently and totally disabled, and further, said William V. Mahoney was on the 3d day of July, 1931 and ever since has been and is now insane and judgment is entered herein in favor of the above named plaintiff and against the defendant, United States of America, and that there is now due said plaintiff for the benefit of its ward, William V. Mahoney, incompetent, upon said policy of war risk insurance carried by said William V. Mahoney, which is referred to in the complaint herein, the accrued payments of $57.50 per month from the 22nd day of May, 1920, until this date, and

It Is Further Ordered and Adjudged that there be and hereby is allowed to said plaintiff's attorneys, Allan A. Bynon and Gerald J. Meindl, as a reasonable attorneys fee herein ten per centum (10%) of the amount recovered by the plaintiff herein; that is to say, ten per centum of each payment that plaintiff shall hereunder and hereafter [20] collect from such insurance, to be paid to the said Allan A. Bynon and to the said Gerald J. Meindl by the Veterans Administration of the United States out of the payments to be made under this judgment at the rate of one tenth (1/10th) of each of such payments;

And It Is So Ordered.

Dated this 14th day of December, 1942.

JAMES ALGER FEE
Judge

[Endorsed]: Filed and Docketed: December 14, 1942 [21]

And Afterwards, to wit, on the 19th day of December, 1942, there was duly Filed in said Court, a Motion to set aside verdict and judgment and for judgment for defendant, in words and figures as follows, to wit: [22]

[Title of District Court and Cause.]

MOTION TO SET ASIDE VERDICT AND JUDGMENT, AND FOR JUDGMENT FOR THE DEFENDANT, IN ACCORDANCE WITH ITS MOTION TO DISMISS AND ITS MOTION FOR A DIRECTED VERDICT, OR, IN THE ALTERNATIVE, FOR A NEW TRIAL.

Comes Now the defendant, above named, and respectfully moves this Court to set aside the verdict of the Jury, filed and entered herein, and any Judgment entered thereon in the above entitled cause, and for judgment in its behalf in accordance with its Motion to Dismiss and its Motion for a Directed Verdict made at the close of all of the evidence, to-wit:

I.

Motion to Dismiss

1. That it affirmatively appears that the Court has no jurisdiction to hear and determine this cause.

2. That there has been introduced in this case no substantial evidence tending to prove that the insured was insane or that he was rated as incompetent or insane by the Veterans Administration on or prior to July 3, 1931.

3. That it affirmatively appears from the evidence in this case that on and before July 3, 1931 the insured was not insane and that he was not rated by the Veterans Administration as incompetent or insane. [23]

II.

Motion for a Directed Verdict

1. That there has been introduced in this case no substantial evidence to sustain the allegations of the plaintiff's complaint that the insured became permanently and totally disabled on or before May 22, 1920 or at any time when his War Risk Yearly Renewable Term Insurance was in full force and effect.

III.

In the event defendant's Motion to set aside the verdict of the jury, filed and entered herein, and any judgment entered thereon, and for judgment for the defendant in accordance with its Motion for a Directed Verdict, is denied; then and in that event, and in the alternative, defendant prays that

it be granted a new trial on the grounds and for the following reasons:

1. That there was introduced on the trial of this case no substantial evidence tending to prove that the insured was insane or that he was rated as incompetent or insane by the Veterans Administration on or prior to July 3, 1931.

2. That the evidence introduced in this case was insufficient to justify the verdict of the jury for the plaintiff and against the defendant.

3. Error in law occurring at the trial.

4. The verdict of the jury is against the weight of the evidence.

5. When measured by the rules of law, as stated by the Court in his charge to the jury, the evidence in this case does not justify and is insufficient to support the verdict rendered.

6. It affirmatively appears from the evidence [24] introduced in this case that the insured was able to and did for many years subsequent to May 22, 1920 follow with reasonable regularity a substantial gainful occupation without injury to his health and was, therefore, not permanently and totally disabled on May 22, 1920.

This Motion is based and will be presented on the records and files herein, upon the pleadings and Pre-trial Order, upon the evidence and exhibits introduced, the verdict of the jury, and any judgment entered thereon.

Dated this 17th day of December, 1942.

CARL C. DONAUGH
United States Attorney
DANIEL DILLON
Attorney, Department of Justice
FRANCIS J. McGAN
Attorney, Department of Justice.

[Endorsed]: Filed December 10, 1942. [25]

And Afterwards, to wit, on Monday, the 1st day of February, 1943, the same being the 80th Judicial day of the Regular November, 1942, Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [26]

[Title of District Court and Cause.]

ORDER DENYING DEFENDANT'S MOTION

This matter having come on for hearing upon motion of defendant for an order setting aside the verdict heretofore rendered by the jury in the above entitled cause on the 12th day of December, 1942, and the judgment rendered on said verdict on the 12th day of December, 1942; and for an order granting defendant's motion for a directed verdict made at the close of all the evidence; and an order granting defendant's motion to dismiss the above

entitled action and for an order granting the defendant a new trial; the plaintiff appearing by Allan A. Bynon and Gerald J. Meindl, its attorneys, and the defendant appearing by Francis J. McGan, Attorney, Department of Justice, of its attorneys, and the Court having taken defendant's motion under advisement and duly considered the same and being fully advised in the premises,

It Is Ordered that said motion be and the same is hereby denied.

Dated at Portland, Oregon, this 1st day of February, 1943.

JAMES ALGER FEE
Judge

[Endorsed]: Filed: February 1, 1943 [27]

And Afterwards, to wit, on the 23rd day of April, 1943, there was duly Filed in said Court, a Notice of Appeal, in words and figures as follows, to wit: [28]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the United States of America, the defendant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in

this action on the 14th day of December, 1942, and from the whole thereof.

CARL C. DONAUGH
United States Attorney
JAMES H. HAZLETT
Assistant United States Attorney
FRANCIS J. McGAN
Attorney, Department of Justice
Attorneys for Defendant
U. S. Court House
Portland, Oregon.

[Endorsed]: Filed April 23, 1943. [29]

And Afterwards, to wit, on the 23rd day of April, 1943, there was duly Filed in said Court, a Statement of points upon which appellant intends to rely, in words and figures as follows, to wit: [30]

[Title of District Court and Cause.]

STATEMENT OF POINTS UPON WHICH THE DEFENDANT AND APPELLANT INTENDS TO RELY ON APPEAL

Comes Now the defendant and appellant, the United States of America, and hereby specifies as the points upon which it intends to rely on appeal from judgment in the above entitled action the following:

I.

That the Court erred in denying and overruling defendant's Motion to dismiss made at the close of the plaintiff's case on each and all of the grounds as stated therein.

II.

That the Court erred in denying and overruling defendant's Motion to dismiss made at the close of all the evidence on each and all of the grounds as stated therein.

III.

That the Court erred in denying defendant's Motion for a directed verdict made at the close of all the evidence on each and all of the grounds as stated therein. [31]

IV.

That the Court erred in denying defendant's Motion to set aside verdict and judgment, and for judgment for the defendant, in accordance with its motion to dismiss and its motion for a directed verdict, or, in the alternative, for a new trial on each and all of the grounds as stated therein.

Dated this 23rd day of April, 1943.

CARL C. DONAUGH
United States Attorney
JAMES H. HAZLETT
Assistant United States Attorney
FRANCIS J. McGANN
Attorney, Department of Justice
Attorneys for defendant.

Service of the above and foregoing Statement of points on which the defendant and appellant intends to rely on appeal, and receipt of a true and correct copy thereof, acknowledged this 23rd day of April, 1943.

BYNON & MEINDL
By GERALD J. MEINDL
Attorneys for plaintiff.

[Endorsed]: Filed April 23, 1943. [32]

And Afterwards, to wit, on the 23rd day of April, 1943, there was duly Filed in said Court, Designation by appellant of contents of record on appeal, in words and figures as follows, to wit: [33]

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL

Comes Now the defendant and appellant herein,

The United States of America, and hereby designates as the portion of the record, proceedings and evidence to be contained in the record on appeal the following:

1. Complaint, with the date of filing endorsed thereon.
2. Answer.
3. Amended Pre-Trial Order.
4. Verdict.
5. Judgment, with the date of filing endorsed thereon.
6. Motion to set aside verdict and judgment, and for judgment for the defendant, in accordance with its motion to dismiss and its motion for a directed verdict, or, in the alternative, for a new trial, with the date of filing endorsed thereon.
7. Opinion of the Court, if any has been filed, on defendant's Motion to set aside verdict and judgment, and for judgment for the defendant, in accordance with its motion to dismiss and its motion for a directed verdict, or, in the alternative, for a new trial. [34]
8. Order denying defendant's Motion to set aside verdict and judgment, and for judgment for the defendant, in accordance with its motion to dismiss and its motion for a directed verdict, or, in the alternative, for a new trial, with the date of filing endorsed thereon.
9. Transcript of the evidence and proceedings had at the trial except the instructions of the Court.

10. Notice of appeal, with date of filing endorsed thereon.

11. Statement of points upon which the defendant intends to rely on appeal.

12. This Designation of contents of record on appeal, and

13. Clerk's Certificate.

Dated this 23rd day of April, 1943.

CARL C. DONAUGH
United States Attorney
JAMES H. HAZLETT
Assistant United States Attorney
FRANCIS J. McGAN
Attorney, Department of Justice
Attorneys for Defendant.

Service of the above and foregoing Designation of contents of record on appeal, and receipt of a true and correct copy thereof, acknowledged this 23rd day of April, 1943.

BYNON & MEINDL
By GERALD J. MEINDL
Attorneys for Plaintiff.

[Endorsed]: Filed April 23, 1943. [35]

And Afterwards, to wit, on the 26th day of April, 1943, there was duly Filed in said Court, Designation by Appellee of additional portions of record to be included in transcript of record on appeal, in words and figures as follows, to wit: [36]

[Title of District Court and Cause.]

DESIGNATION OF ADDITIONAL MATTERS TO BE INCLUDED IN RECORD ON APPEAL

Comes Now the plaintiff and appellee herein and hereby designates the following additional matters to be contained in the record on appeal:

1. Opening statement of defendant's counsel.
2. Instructions of the Court.
3. Arguments of defendant's counsel to the jury.

Dated this 26th day of April, 1943.

BYNON & MEINDL
/s/ ALLAN A. BYNON
/s/ GERALD J. MEINDL
Attorneys for Plaintiff

[Endorsed]: Filed: April 26, 1943 [37]

And Afterwards, to wit, on the 23rd day of April, 1943, there was duly Filed in said Court, a Statement of the Evidence by appellant, in words and figures as follows, to wit: [38]

[Title of District Court and Cause.]

STATEMENT OF EVIDENCE

Portland, Oregon, December 10, 1942.
10:00 o'clock A.M.

Be It Remembered That, on this 10th day of December, 1942, at the hour of 10:00 o'clock A.M. thereof, the above entitled cause came regularly

on for hearing before the above entitled Court, the Honorable James Alger Fee, Judge, presiding.

The plaintiff appeared by Messrs. Allan A. Bynon and Gerald J. Meindl; the defendant appeared by Messrs. Francis J. McGan and Daniel Dillon.

Thereupon proceedings were had as follows:

PROCEEDINGS: [39]

The Court: Call a jury.

(A jury was thereupon duly empaneled and sworn, and opening statements made to the jury by counsel for the respective parties, after which, at 12:00 o'clock noon, December 10, 1942, a recess was taken until 2:00 [43] o'clock P. M. for the same date.)

Portland, Oregon, December 10, 1942.

2:00 P. M.

(After recess)

The Court: You may proceed, Gentlemen:

Mr. Bynon: Your Honor, I will call Mrs. Mahoney.

MRS. CLARA MAHONEY

was thereupon produced as a witness in behalf of the plaintiff herein, and, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Bynon:

Q. Now Mrs. Mahoney, if you will speak so I can hear you then I am sure all the ladies and gentlemen on the jury will hear you too, and I

(Testimony of Mrs. Clara Mahoney.)

want you to direct your answers to them. Will you state your name, please?

A. Clara Mahoney.

Q. And are you the wife of the plaintiff's ward, Mr. Mahoney, who sits here in the counsel table?

A. Yes, sir.

Q. Did you know your husband before his entry into the World War in the spring of 1917?

A. Yes, I did.

Q. Where were you living at that time?

A. At Minot, North Dakota.

Q. And were you and Mr. Mahoney sweethearts?

A. Yes.

Q. And did you keep contact with him during the time he was in the Army? A. Yes, sir.

Q. And with relation to the time he was discharged from the Army, the 22nd day of May, 1920, when were you and Mr. Mahoney married?

A. The 27th of May, 1920.

Q. Was he still in uniform at that time? [44]

A. Yes, sir.

Q. Before he left to go into Army service what kind of a man was he mentally and physically that you observed? Just tell the Court.

A. He did very hard work, you know, at that time, mason work and brick laying. He had very good health at that time.

Q. Well, how was his health at that time?

A. Just fine.

Q. What was his disposition at that time?

A. Just fine.

(Testimony of Mrs. Clara Mahoney.)

Q. Now when you were married and he was returned to civil life tell the jury what you observed about him then. What was his condition then physically and mentally?

A. He was much lighter than he used to be, and I know he couldn't do heavy work like he used to.

Q. First of all, was he well like he was before or was he otherwise?

A. No, he wasn't. He hadn't been really well since he was discharged.

Q. You mean since the date of his discharge until now? Of what has he complained? Start with when he got out of the Army. What was his trouble that you observed?

Mr. Dillon: I will object, your Honor, for the reason that it would be hearsay and self-serving declarations.

The Court: Read the question.

(The question was read.)

The Court: She may answer.

Mr. Bynon: If your Honor please, I believe the reporter has a partial answer.

The Reporter: I didn't get any answer, Mr. Bynon.

Mr. Bynon: His Honor ruled that you may answer the question.

A. He was irritable and not as strong as he used to be.

Q. Did he make any complaint about any physical ailment? A. No. [45]

(Testimony of Mrs. Clara Mahoney.)

Q. Have you been a witness before, Mrs. Mahoney?

A. This is the first time in a courtroom.

Q. Just listen to my questions and take your time and take it easy. What if anything did you notice or observe about your husband's back?

A. He had a back injury.

Q. Well, what if any complaints did he make about that? A. It pained him at times.

Q. I will ask you, Mrs. Mahoney, have you and your husband been living together through these years?

A. Except when he has been ill and at the hospital. Of course I came out west and he came out after me.

Q. You are living together now in Portland, Oregon as husband and wife? A. Yes.

Q. You look after him, do you?

A. Yes, sir.

Q. Mrs. Mahoney, knowing your husband's condition as you do, tell the jury how his condition compares now with what it was when you married him and lived with him after the war.

A. He has seizures, you know; not regular, but sometimes a month apart and sometimes a week or so apart, and then between times he feels pretty good.

Q. Take him as we see him there, is that about average or normal for him?

A. He is older, you know.

(Testimony of Mrs. Clara Mahoney.)

Q. Yes, I guess we all are, but is there any substantial difference between how he was when you folks married and settled at Minot, North Dakota and what you see today, except for his being older?

A. He is not as strong as he was, I know that. Outside of that he is the same.

Q. Speak a little louder. [46]

A. Outside of that he is the same, outside of having the seizures.

Mr. Bynon: You may cross-examine.

Cross-Examination

Mr. Dillon: Mr. Bailiff, may I have Exhibit No. 10?

By Mr. Dillon:

Q. Mrs. Mahoney, after your husband's return from the Army what did he do?

A. Well, he worked for the Northern States Power Company for about a year or so.

Q. I didn't hear you.

A. He worked for the Northern States Power Company.

Q. And how long did he work there, do you recall?

A. A year and a half or a year, something like that.

Y. And do you recall or do you know of your own knowledge what wage he received during that year and a half?

A. I think around twenty dollars a week, I believe.

(Testimony of Mrs. Clara Mahoney.)

Q. Do you recall or do you not when he took up vocational training?

Mr. Bynon: That is objected to as not gone into on direct and not proper cross-examination.

The Court: She may answer.

A. That was about 1926. He was in Seattle at that time; he was in the school up there.

Q. (By Mr. Dillon): I might state the records show it was from January, 1922 to May, 1924. Would that refresh your memory?

A. I thought it was later than that.

Q. When did you and Mr. Mahoney come to Portland, approximately? I know it is difficult to remember.

A. Well, it was around 1922 or '23.

Q. And you have lived here in Portland ever since?

A. Only the time we were at Seattle for about a year.

Q. You made some reference to Mr. Mahoney having one difference now and at the time of his discharge, that he had a seizure. [47] When to the best of your recollection do you recall he had the first seizure?

A. You mean when he had the last one?

Q. No, the first one.

A. Oh, about 1925 or around in there. I am not very good at remembering dates.

Q. And from 1925, if that were correct, until 1932 how often would you say during the year he had a seizure?

(Testimony of Mrs. Clara Mahoney.)

A. Sometimes he goes for a month without having a seizure, and sometimes he will have one every day or every week.

Q. That began, did it not, in 1932, that he began to have them as frequently?

A. That is when he went to the hospital the first time.

Q. No, the first hospital he went in 1934.

A. Well, he had them before that.

Q. I mean, he did not have them very frequently until after 1932? A. No.

Mr. Dillon: I think that is all.

Mr. Bynon: Nothing further, your Honor.

(Witness excused.)

Mr. Meindl: If your Honor please, we offer the deposition marked Pre-Trial Exhibit No. 7, being the deposition of Mrs. Frank Donahue.

The Court: You may proceed with the reading of it.

Mr. Bynon: I don't know how your Honor would prefer. I will take the stand and read the answers?

The Court: You are presenting the testimony.

Mr. Meindl: May we proceed in that way your Honor? I think it gives a better picture to the jury.

The Court: Yes. You understand now, Ladies and Gentlemen of the Jury, that the witness whose deposition is about to be read was examined under authority of this Court at a different place. The witness took the stand there, was sworn, [48] and was then questioned. The questions will now be

read by Mr. Meindl on one side, and Mr. Bynon will represent the witness in the chair, and the Government will probably read their questions on their cross-examination, and Mr. Bynon will still represent the witness. [49]

(The deposition of Mrs. Frank Donahue, Plaintiff's Pre-Trial Exhibit No. 7, was then read to the jury; said deposition, omitting all formal parts, is in words and figures as follows, to-wit:)

MRS. FRANK DONAHUE

was thereupon produced as a witness in behalf of the plaintiff herein and, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Meindl:

Q. Would you state your name, please?

A. Loretta Donahue.

Q. What is your husband's name?

A. Frank Donahue.

Q. You are Mrs. Frank Donahue?

A. Yes, I am.

Q. Where do you live, Mrs. Donahue?

A. At Minot, North Dakota.

Q. How long have you lived in North Dakota?

A. Oh, about forty-five years.

Q. How do you happen to be in Oregon at the present time?

(Deposition of Mrs. Frank Donahue.)

A. Well, I came here to see my brother.

Q. What is your brother's name?

A. William V. Mahoney.

Mr. McGan: Beg your pardon?

A. William V. Mahoney.

Mr. Meindl: Is that the William V. Mahoney who is plaintiff in this case against the Government?

A. Yes, sir.

Q. How long have you been here in Oregon?

A. Since a week Tuesday.

Q. And when do you plan to leave?

A. Tomorrow morning.

Q. For home? [50] A. For home.

Q. Mrs. Donahue, where were you living prior to the time your brother, William Mahoney, went into the Army? Where were you living then?

A. At Minot.

Q. And where was William Mahoney living?

A. At his home.

Q. And where was that?

A. At—well, I just don't know. It was at Minot, North Dakota.

Q. At Minot is what I mean? A. Yes.

Q. Did you have occasion to observe him for a year or two prior to his going into the Army?

A. Yes, I did.

Q. What if anything did you notice about his mental and physical condition at that time?

A. Well, he was in the best of health.

Q. How about his mental condition?

(Deposition of Mrs. Frank Donahue.)

A. He was very good.

Q. Did you have occasion to see William Mahoney during the time he was in the army service?

A. No, not while in the service.

Q. Well, was he home at any time?

A. Yes, he was home on a furlough.

Q. When was that? A. January, 1920.

Q. Did you see him at that occasion?

A. Yes, I did.

Q. What was the reason for his coming home?

A. On account of Father's death.

Q. And how long was he home on that furlough?

A. Well, he was home about three weeks. [51]

Q. About how often did you see him during that furlough?

A. Well, I saw him nearly every day.

Q. What if anything did you observe about Mr. Mahoney's appearance or condition when he first came home on that furlough?

A. He was very nervous and quarrelsome and seemed to be afraid of something,—I just don't know what it was—and his mind seemed to be rambling. He would carry on a conversation, he would ramble and never could stay on one thing at a time, subject.

Q. What if anything was he wearing in addition to clothes at that time?

A. He was wearing a brace, a steel brace.

Q. On what part of his body?

A. From his neck down to the—all down along

(Deposition of Mrs. Frank Donahue.)

his spine and all though his—around his body, braced around.

Q. How low did that brace come, do you know?

A. Well, clear down to the end of the spine.

Q. Did you notice anything about his color?

A. He was very pale.

Q. And how about his strength?

A. He had no strength at all. He wasn't able to dress himself and shave himself or get around without any help. We had to help him.

Q. Well, what about his walking?

A. He walked very slow and stooped, or just could hardly get around.

Q. Let's see, did you testify about whether or not he dressed himself?

A. No, he didn't dress himself.

Q. I believe you testified you had occasion to observe him practically every day for that period of three weeks? A. Yes, I did.

Q. Would you have an opinion as to whether or not his mind [52] was affected at that time?

A. Yes, I should say it was.

Q. When did you next see your brother, Mr. Mahoney?

A. Well, on this trip is the first time I saw him.

Q. Well, where did he return after his discharge from the Army?

A. Well, he returned to Minot.

Q. Did you have occasion to see him then?

A. Well, I saw him just for a short time, but I

(Deposition of Mrs. Frank Donahue.)

had left there for some time on account of my health, so I——

Q. (Interrupting): Well, where did Mr. Mahoney return after he got out of the Army?

A. He returned to his home.

Q. In Minot? A. Uh-huh.

Q. Were you in Minot at that time?

A. Yes, I was.

Q. And how long did you stay in Minot before you left?

A. Well, it was just about a month or so, then I went on a trip.

Q. Did you have occasion to see Mr. Mahoney during that time? A. Yes, I did.

Q. Would you state what you observed about his physical and mental condition at that time, physical and mental appearance at that time?

A. Well, I didn't see much improvement over the time he was on furlough.

Q. Well, what about his conversation, for instance?

A. It was very rambling and uncertain, never could stay on one subject.

Q. What else did you observe?

A. That he was very quarrelsome and hard to get along with.

Q. What did he do with his time when he first got home?

A. Well, he didn't do anything; just laid around for a while.

(Deposition of Mrs. Frank Donahue.)

Q. How long were you away on this trip? [53]

A. Seven weeks.

Q. Did you return to Minot then?

A. Yes, I did.

Q. And when did Mr. Mahoney leave Minot?

A. Well, that I just can't recall, when he left.

Q. Was he still there when you returned?

A. No, he was not.

Q. You say you haven't seen Mr. Mahoney until this visit this year?

A. Not until this visit.

Q. What have you observed about him on this trip to Portland, Oregon?

A. Well, I really think that he is in a very poor condition. That is, I don't see much change in the condition before.

Q. What about his conversation?

A. He still can't carry on a conversation with anyone. He wanders. You have him on one subject and he will be discussing something else; he seems to be wandering some place else.

Q. Now, would you compare that with what it was when you saw him on this furlough and when you saw him when he first got out of the army and returned to Minot?

A. Well, his physical condition now, he looks a little bit better, but not much improved in conversation and in mind.

Q. Would you compare your testimony about being quarrelsome and hard to get along with now and what it was when he first returned?

(Deposition of Mrs. Frank Donahue.)

A. Yes, I will.

Q. What would you state it was?

A. Well, it was the same thing. He is very hard to get along with and is very nervous and everything upsets him very easily.

Q. Has he ever expressed any feelings with regard to what others thing about him? [54]

A. Well, he thinks everyone is down on him.

Q. Now, is that the condition today or when you first saw him?

A. Well, he has always felt that way. When he first came out of the army he felt that someone was always trying to do him wrong.

Q. When he came home at the time of his father's death, on this furlough, was there any occasion for other members of the family to depend upon any actions of his to do anything?

A. Well, his brothers had to wait on him, dress him and undress him, shave him.

Q. Oh, Mrs. Donahue, when did your father die?

A. Well, it was in 19—did I say 1920 or 19——

Q. (Interrupting): Well, I don't think I asked you. I am trying to fix the date of this furlough when he was home.

A. Well, it was in 1919, I think, Father died, if I am correct.

Q. For your information, the record will show that Mr. Mahoney entered the service on July 13, 1917 and was discharged therefrom on May 22, 1920. Now can you recall just about how long it was

(Deposition of Mrs. Frank Donahue.)

when he was home on a furlough before he was discharged in May of 1920?

A. No, I can't recall.

Q. You don't recall whether it was 1919 or 1920 that your father died?

A. It was 1919, the furlough.

Q. Now, would you compare this condition of being nervous and quarrelsome and suspicious, his mind wandering, his conversation rambling and disconnected, with what it was before he went into the army?

A. Oh, he was strong and well before he went into the army. He didn't have any rambling conversation then.

Q. Well, did he have any of these symptoms of mind wandering, talking about his troubles, rambling, and disconnected conversation, and being suspicious of other people, and being nervous, before he went into the army? [55]

A. No, he did not.

Q. Now, after your brother's discharge from the army how soon did you notice these things that you testified to about his mental condition?

A. Well, he has always been that way since he has been discharged that I have saw him.

Q. Oh, was your brother still in uniform when he came home to Minot?

A. Well, not after he was discharged.

Q. Do you know how soon he came home after his discharge?

A. Well, that I don't know. I can't recall.

(Deposition of Mrs. Frank Donahue.)

Q. Do you recall what month in the year it was when he came home after he got out of the army?

A. No, I don't. I can't recall that, either.

Q. Well, do you recall the season of the year, whether it was spring or summer or fall?

A. Well, I think it was in the summer sometime, but just what month I don't know.

Mr. Meindl: I believe that is all.

Cross-Examination

My Mr. McGan:

Q. Is your brother younger or older than you are? A. He is younger than I am.

Q. How much?

A. He is about three years younger.

Q. Were you married at the time that he went to war? A. Yes, I was.

Q. Were you living at home?

A. No, I was not living at home. I was living in Minot.

Q. But you were not living at the same place?

A. No, not at the same house.

Q. You were home every day, were you?

A. Yes, I was.

Q. And did you see his brother shave him? [56]

A. Well, I didn't see him shave him but I know that he took care of him, took off his clothes and——

Q. (Interrupting): How do you know that?

A. Well, I was there at one occasion when I saw them getting him ready for bed, but——

(Deposition of Mrs. Frank Donahue.)

Q. (Interrupting): And that is all? Just the one time? A. Yes.

Q. You didn't know anything about any other time?

A. No, because I wasn't at home. I had a home of my own to take care of.

Q. Did you see him shave him at all?

A. No, I did not.

Q. You don't know whether they shaved him or not, then?

A. Well, I am positive that they did, because he——

Q. (Interrupting): How are you so positive?

A. Well, he was not able to raise his arms or get around.

Q. Just answer my question: How are you so positive? Did somebody tell you they shaved him? Is that right?

A. Well, my oldest brother done the shaving.

Q. How did you know that?

A. Well, he said he did.

Q. That is right. Now, the same way with the dressing and undressing? A. Yes.

Q. They told you about that. Then when he came home from the army and was finally discharged you were there very little, is that right?

A. Yes, that is right.

Q. You saw very little of him, is that right?

A. I didn't see very much of him, no.

Q. You had taken your leave from Minot before he got home, had you not?

(Deposition of Mrs. Frank Donahue.)

A. Yes, I had.

Q. Then you returned there? [57]

A. Yes, after seven weeks.

Q. And how long did you stay after you returned?

A. Well, I stayed there permanently then.

Q. You stayed there permanently?

A. Yes.

Q. And he left, is that right? In the meantime he had left? A. Yes, he had.

Q. And then you didn't see him again?

A. No, not until this trip.

Q. Until this time; so you know nothing about his condition—you know nothing about him of your own knowledge between the time of his discharge from the army——

A. (Interrupting): Well, from just what I saw him just on one or two occasions after——

Q. Interrupting): How long a time did you see him after he was discharged?

A. Well, I couldn't recall that.

Q. Very long, Mrs. Donahue? That is, several days, or just for a visit?

A. Well, on some occasions just when I would go up home, or something like that, he might be in there or he might not.

Q. And how often do you think you saw him? Two or three times, or more?

A. After he was discharged?

Q. Yes.

(Deposition of Mrs. Frank Donahue.)

A. Well, I didn't see him until after I came back, and that was once I saw him.

Q. And you just saw him the one time?

A. One time.

Q. After his discharge. Now, if you can recall, how long did you see him that one time?

A. Well, I don't recall that. I couldn't answer that positively.

Q. Well, you don't have to and I don't expect you to, after this long a time has elapsed. Just give me your best recollec- [58] tion.

A. Well, I was gone away when he was discharged and he left before I got back, so I couldn't recall anything, and I was in very poor health and wasn't around as much as—at that time.

Q. Am I to understand your testimony that when he was discharged and came home you had left?

A. Yes, I had. I had left Minot before he was discharged.

Q. And then before you got back he left?

A. He left.

Q. So, as a matter of fact, you did not see him at all, after his discharge?

A. No, not after his discharge; just while he was home on a furlough.

Q. You never saw him—after you saw him on that furlough you never saw him again until last Friday? A. Last Tuesday.

Q. Or last Tuesday, I beg your pardon. Now, is that correct? A. Yes, sir.

(Deposition of Mrs. Frank Donahue.)

Q. That is your testimony here. Very well, so you know nothing about his condition after he was discharged from the army?

A. No, I don't.

Q. You have no knowledge of any of—These things that you have testified to here all occurred before his discharge? A. Yes.

Q. And at the time he was home it was to attend and assist in the burial of your father?

A. Yes.

Q. How many brothers and sisters are there in the family?

A. There's just four brothers. I am the only girl.

Q. And are they all resident in Minot?

A. Not now, no.

Q. Where do they live? [59]

A. One lives at—John lives at Milwaukee, Wisconsin, and James E. lives at Seattle, Washington, and Francis lives at Everett, Washington.

Q. I see. Now, which one of the brothers was home when he was discharged from the army, if you know?

A. Well, they were all home. My oldest brother was home and he moved away, after he went back on a furlough, he moved to Milwaukee—or to Hibbing, Minnesota.

Q. And, of course, the parents were living there, were they? Were they living there?

A. Just the mother.

Q. Is she still alive?

(Deposition of Mrs. Frank Donahue.)

A. No, she is dead.

Q. Do you have the addresses of these brothers that lived at Minot when your brother was discharged? A. Yes, I have.

Q. Will you give them to the reporter, please?

A. Do you want the street addresses, too?

Q. Yes, if you have them.

A. John Mahoney, 2319 West State Street, Milwaukee, Wisconsin; and J. E. Mahoney, 124 Warren Avenue, Seattle, Washington; and Francis Mahoney, 2130 State Street, Everett, Washington.

Q. You were ill at the time your brother came home for the furlough? A. Yes, I was.

Q. When he came home for the furlough?

A. Oh, not when he came home for the furlough, no.

Q. You were in good health at that time?

A. Yes.

Q. And saw him every day, did you?

A. Yes, every day.

Mr. Meindl: Is that all?

McGan: Yes. [60]

Mr. Meindl: I believe no further questions.

Redirect Examination

By Mr. Meindl:

Q. Say, there is one question, just to clear that up: Mrs. Donahue, the testimony that you gave on direct examination about your brother's appearance and actions had reference to the time he was home on a furlough, is that correct?

(Deposition of Mrs. Frank Donahue.)

A. On a furlough?

Q. It had no bearing on the time he came home after he was discharged from the army, is that it?

A. No, I didn't see him then.

Mr. Meindl: That is all. [61]

Mr. Meindl: We now offer the depositions of J. A. Hennessy, Walter Dooley, and A. E. Abbott, witnesses taken by the plaintiff in Minneapolis, Minnesota on May 25, 1942.

Mr. McGan: What is the number of that exhibit?

Mr. Meindl: It is Pre-Trial Exhibit No. 6. [62]

(The depositions of J. A. Hennessy, Walter Dooley, and A. E. Abbott, Plaintiff's Pre-Trial Exhibit No. 6, were then read to the jury; said depositions, omitting all formal parts, are in words and figures as follows, to-wit:)

A. E. ABBOTT

a witness of lawful age, having been first duly sworn by the Notary Public, testified as follows:

Examination by Mr. Meindl:

Q. Would you state your name, please?

A. Albert E. Abbott.

Q. Where do you live?

A. 4835 First Avenue South.

Q. In Minneapolis, Minnesota?

A. That is right.

Q. What is your occupation?

(Deposition of A. E. Abbott.)

A. Bookkeeper.

Q. For what company?

A. Northern States Power Company, 15 South 5th Street.

Q. Here in Minneapolis?

A. In Minneapolis.

Q. Mr. Abbott, how long have you been with the Northern States Power Co.?

A. 21 years.

Q. Were you ever stationed with that company in Minot, North Dakota? A. Yes.

Q. When did you start to work for them in Minot? A. Permanently?

Q. Both. A. February, 1921.

Q. Are you acquainted with William V. Mahoney, the insured in this case?

A. Yes, to the extent that I worked with him at the time he was employed at Northern States Power Company. [63]

Q. Where and when was that?

A. Minot, North Dakota—Northern States Power Company—February, 1921 up to the time he left the company.

Q. Do you recall about when he left the company?

A. Well, I wouldn't have known him over six to eight months.

Q. What was your capacity with the company there in Minot when you knew Mr. Mahoney?

A. I would say collections and assistant storekeeper.

(Deposition of A. E. Abbott.)

Q. Were you in the office then?

A. That is right.

Q. What was Mr. Mahoney doing for the company?

A. He was more or less errand boy, or office boy doing odd jobs around the office such as file clerk and making addressograph plates for accounts receivable customers.

Q. I take it Mr. Mahoney was not under your direct supervision? A. That's right.

Q. Did Mr. Mahoney have a nickname in that office? A. Yes, he did.

Q. What was it?

A. I don't know if any one called him this nickname directly to his face but they called him "Dizzy Mahoney."

Q. Mr. Abbott, will you explain about that nickname of "Dizzy Mahoney" and explain as to who called him that? If——

A. He was commonly known among the employees as "Dizzy Mahoney," and whenever you wanted him you would ask someone "Where is Dizzy Mahoney?"

Q. Mr. Abbott, would you testify and explain the activities of Mr. Mahoney during the time you were employed together?

A. If you had an errand for him to run such as getting change from the bank——

Q. Mr. Abbott, would you confine it to your personal observation as to how Mr. Mahoney acted there at the Northern States Power Company?

(Deposition of A. E. Abbott.)

A. If you were looking for Mr. Mahoney to do some errand you would usually find him in some out-of-the-way place amusing himself by either looking out the window or playing with some small object in his hands such as an eraser or pencil. This was more the case than not.

Q. What do you mean by more the case than not?

A. You wouldn't find him where you would expect him, writing addressograph plates or doing some work he was assigned to.

Q. Did you ever notice anything about his mental state, and by that I mean what his state of mind seemed to be?

A. He was peculiar.

Q. On what do you base the conclusion that he was peculiar? What made you think that, Mr. Abbott?

A. Inasmuch as he was by himself, particularly didn't want to associate with fellow employees.

Q. Mr. Abbott, did he associate with his fellow employees in the office?

A. To the extend he did the work assigned to him, and if you [64] wanted him look for him and give him another job and he would complete that.

Q. How about the other times?

A. He was by himself.

Q. Mr. Abbott, did you know Mr. Mahoney before he went into the army? A. No, sir.

Q. Have you ever had occasion to see him since he left Northern States Power?

(Deposition of A. E. Abbott.)

A. No, sir.

Q. Are you acquainted with a party by the name of Slocum who worked for Northern States Power? A. Yes, sir.

Q. Have you any recollection of an incident occurring between Mr. Slocum and Mr. Mahoney?

A. No, sir.

Cross Examination

By Mr. Lytle:

Q. Mr. Abbott, about how old were you in February, 1921? A. 23½.

Q. About how old was Mr. Mahoney when he came to work there, or when you first knew him while working there in February, 1921?

A. I should judge 24 or 25 years old.

Q. You don't know of your own personal knowledge what his earnings were—I mean of your own personal knowledge, not what you heard?

A. No, I don't.

Q. I think you say you first became acquainted with him in February, 1921?

A. That is right.

Q. And then you knew him for six or eight months? A. That is right.

Q. And then he left there after six or eight months?

A. Something about that time. I have been employed with the [65] company since February, 1921 continuously.

Q. Where was your desk in relation to his desk, Mr. Abbott?

(Deposition of A. E. Abbott.)

A. When I was going collections, I just had a place to come to and check in—not a desk. I didn't have a permanent desk as I recollect. He had a table in the addressograph room.

Q. Were you doing collections during all this six or eight months? A. No.

Q. As assistant collector were you out part of the time? A. Yes, sir.

Q. How much of the day would you be about?

A. Average half a day.

Q. You didn't know what he was doing half the day—that is, of course, on personal observation? A. No, sir.

Q. What part of the six or eight months that you knew Mr. Mahoney were you assistant storekeeper?

A. Approximately five months.

Q. You say he had no designated desk or location?

A. That is right. This is 21 years ago.

Q. What significance would that have?

A. It is a long time ago—you forget things in the past—lots of things I can't remember.

Q. Mr. Mahoney wasn't under your supervision at all? No, sir. None whatever.

Q. Are there any other people here with the Northern States Power Company, employed here in Minneapolis, who were employed in Minot at that time?

A. I know Mr. J. A. Hennessy. I hired out under him.

(Deposition of A. E. Abbott.)

Q. He is here today? A. Yes, sir.

Q. Who else? A. W. C. Dooley.

Q. Who else? [66] A. That's all.

Q. And they are the only persons employed by Northern States Power now?

A. At that time? I know others——

Q. I mean at that time—who else was employed in the office at that time who are not here?

A. You mean who are here now?

Q. No, who else was employed in the office when you were? A. P. J. Montgomery.

Q. Where is he? A. He is here.

Q. He was employed in the office at that time?

A. Yes, sir.

Q. He is not employed with the company though? A. Yes, he is.

Q. Who else, Mr. Abbott?

A. There was a man who was out there for about two years who is down here now, but he wasn't there at the time Bill Mahoney was there.

Q. Who else was there when Mahoney was there? A. My brother was there.

Q. What is your brother's name?

A. Raymond F. Abbott.

Q. Where does he live?

A. Minot, North Dakota.

Q. Who else?

Q. J. F. McGuire, Manager out there at the time.

Q. Where is he now?

(Deposition of A. E. Abbott.)

A. Fargo, North Dakota.

Q. Who is he with at Fargo? The same company? A. Yes, sir.

Q. Who else?

A. H. R. Slocum. In the capacity of job foreman.

Q. Where is he now?

A. He is with a utility, an electric utility in South Dakota. [67]

Q. Do you know where?

A. He was in Hot Springs but has *has* been transferred—I don't know—I believe it is Columbus, Nebraska. I think it is Central West or Midwest Utilities.

Q. Who else, Mr. Abbott?

A. Blanche Callahan.

Q. Where is she?

A. Northern States Power at Minot.

Q. Whereabouts at Minot?

A. Minot, North Dakota. You mean her capacity?

Q. I don't need her capacity. Anyone else?

A. Not in the office?

Q. No, in the office.

A. Florence Callahan, sister of Blanche, Minot, North Dakota. She has been married since. I don't recall her name now. Trying to think of another fellow that was there. J. A. Hennessy, I gave you that—Walter Dooley. Comparatively small office at that time. Let's see there was another girl there—Iva Brundage. She has since married.

(Deposition of A. E. Abbott.)

Q. Where does she live?

A. Lives in Minneapolis.

Q. You don't know her name?

A. Yes, Mrs. W. C. Dooley.

Q. This (pointing) Mr. Dooley's wife?

A. Yes, sir. She was a stenographer.

Q. Who else?

A. There was a George E. Balch who was General Superintendent.

Q. George E. Balch?

A. Yes, he was General Superintendent at the time.

Q. Where is he?

A. I don't know. My brother worked there. Another brother of mine, but he wouldn't—still he was there at the time—seems to me he was in and out. He was going to school. I am quite sure he was there at the time. [68]

Q. What is his name?

A. Dr. G. A. Abbott. Do you want his address?

Q. Yes.

A. Stapleton, Staten Island, New York. U. S. Marine Hospital.

Q. That is all?

A. Yes—no, I have still another one—Irene Belanger. She was toll clerk; billing of the toll to customers.

Q. Where is she?

A. At Minot when I left there.

Q. How long ago was that?

(Deposition of A. E. Abbott.)

A. June 30, 1941—but not with the Northern States on June 30, 1941.

Q. Who was she with then?

A. With the bus company. I can't think of the name of the bus company.

Q. There is only one bus company there, isn't there?

A. No, I think there is a couple.

Q. Employed by a bus company?

A. That's right.

Mr. Lytle: I think that is all.

WALTER C. DOOLEY

a witness of lawful age, having been first duly sworn by the Notary Public, testified as follows:

Direct Examination

By Mr. Meindl:

Q. Would you state your name, please?

A. Walter C. Dooley.

Q. And where do you live?

A. 4340 Wooddale Avenue.

Q. Minneapolis? [69] A. That's right.

Q. And what is your occupation?

A. I am statistician at the Northern States Power Company.

Q. Here in Minneapolis? A. Yes, sir.

Q. How long have you been with the Company?

A. I was with them 21 years last—just a mo-

(Deposition of Walter C. Dooley.)

ment, I started in October, 1921, so I will be with them 21 years this October.

Q. Were you ever stationed at Minot, North Dakota, with that Company?

A. Yes, I was.

Q. Are you acquainted with William V. Mahoney? A. Yes, sir.

Q. When did you first meet him?

A. In October, 1921.

Q. Mr. Mahoney was already working there then at the time? A. He was.

Q. What was your position at Minot, North Dakota, with the Company?

A. The storekeeper.

Q. Where was the store room located?

A. The storeroom was directly beneath the general office upstairs.

Q. Do you recall how long Mr. Mahoney stayed with the company after you went there?

A. I believe it was about three months after I started to work. I think it was along the first of the year he left.

Q. Was Mr. Mahoney under your supervision or direction? A. No, he wasn't.

Q. Did you ever have occasion to see Mr. Mahoney after he left the company?

A. No, I haven't.

Q. Now, Mr. Dooley, would you tell us what you noticed and observed yourself about Mr. Mahoney and his actions while with [70] the company during that few months?

(Deposition of Walter C. Dooley.)

A. Yes, during the time I was there, as I remember, his duty was that of an office boy in a general way. We had no janitor. There was a Jap boy used to come and do the cleaning up, and the reason I am bringing this out was that one of Bill's duties was to do some cleaning up that was necessary during the day, and he would install light bulbs and different odd jobs like that, and as I remember it, I don't recall whether he *though* it beneath his dignity to do it, or whether it was distasteful to him as being looked down on, but I do recall that he would come down to the store room, apparently to get away from that. As I say, the general superintendent had an office in the basement, not the general superintendent by the way, he was the general superintendent's assistant. He would apparently come down there to keep away from them upstairs, and I suppose I sympathized with him as I knew he was bent over— He seemed to be physically handicapped—let's put it that way—and because he was an ex-service man, I probably sympathized with him. I suppose that is why he came down—that is the essence of what I wanted to say anyway. I don't know. I haven't much recollection of what I can add to that.

Q. Did you ever notice how he amused himself about the place? That is, how he spent his time?

A. Well, no, Bill was—I wouldn't call him very friendly. I don't think he did much associating—

(Deposition of Walter C. Dooley.)

only those times he came to me for sympathy because, as I say, he was apparently physically handicapped, I gave him that sympathy. I don't think I did much associating with him, so that I could really make a statement as a matter of fact. If I could describe this basement—the stairway came down from the main floor about three-fourths of the way back—the front part was a storeroom; in the rear, the assistant superintendent had a desk and, the stairway being partially enclosed, he would come down and get [71] on the side away from me. The assistant superintendent was out much of the time. They would send the men out to work and he would go out; then, the rest of the time that portion of the basement was not occupied, and Bill would spend his time there, or he would come in and hide in a vault there so people could not come and find him. As for his sitting down near me, or me watching *me* amuse himself, or pass away the time, I can't honestly say I knew how he did it.

Q. Mr. Dooley, did he associate with the other employees in the office?

A. My answer to that would be definitely "no".

Q. Do you remember an employee by the name of Slocum? A. Yes, I do.

Q. Do you recall any incident occurring between Mr. Mahoney and Mr. Slocum?

A. Yes, sir.

Q. Confine yourself to your own personal knowledge or observation.

(Deposition of Walter C. Dooley.)

A. May I bring out that Slocum was the assistant superintendent? The assistant who had the desk in the back part of the basement. Any number of times because my store room office was right close to that office, I heard some rather heated argument. Slocum, I would say two-thirds of this argument was kidding Mahoney and perhaps picking on him because he was easily picked on; but I recall one incident—after some heated words the manager, Mr. McGuire, told Mahoney—this was all in my presence—that he had better lay off Slocum who weighed about 250 lbs., and we were all amused about Mahoney replying that he would cut Slocum down to his size.

Q. What did Mahoney weight at that time?

A. He was about my size. If I could make a guess, about 130 or 135 lbs.

Q. Mr. Dooley, I wish to ask you if Mr. Mahoney ever made any [72] statements to you indicating how he felt other people felt toward him?

A. Yes, there was in Minot—we owned the telephone system and the head operator was Miss Brogan. Mahoney seemed to think she had a violent dislike to him, and he thought——

Q. What was her name?

A. Her name was Brogan—Fran—I don't recall her first name—I am sure that was right. There was another girl in the office, a Miss Tice, that Mahoney seemed to think disliked him very much. I don't recall that he thought any of the men with

(Deposition of Walter C. Dooley.)

the exception of Slocum was picking on him, but those women he seemed to think they were out to get his job, get rid of him, or make life miserable for him, and he would be better off to leave.

Q. Did Mr. Mahoney have a nickname there in the office?

A. Not to my knowledge. I always called him Bill.

Q. Is there anything else you can testify to that you observed about Mr. Mahoney and his actions? Anything unusual about his actions?

A. No, I can think of none right offhand that I haven't given in a general way.

Mr. Meindl: You may *close* examination.

Cross Examination

By Mr. Lytle:

Q. Mr. Dooley, how old was Mr. Mahoney at the time you worked with him during those three months you knew him after October, 1921?

A. Well, I was 22 and it was my thought—he was very bent over and I might have added to it—I thought about 25 years.

Q. And he had an injury? Something wrong with his back? A. Yes.

Q. That was the reason you sympathized with him?

A. Frankly, we were both ex-service men; that is why I sympathized with him. [73]

Q. You said he was physically handicapped; that there was something wrong with his back. What kind of physical handicap was that?

(Deposition of Walter C. Dooley.)

A. He was bent over and he complained about the pain in his back.

Q. You say your office was one floor below the general office? A. That's right.

Q. And you would see Mr. Mahoney when he came down to your office? A. That's right.

Q. You did not see him up in the general office?

A. Oh, yes, on a number of occasions I would go up, and I would see him.

Q. How many times a day would he come down to your office?

A. Probably an average of three or four times a day.

Q. What would he be doing in the main office when you went up?

A. In the back part of the office there was a small room in which they had an addressograph. I believe there was also a cloak room in this room where they had the addressograph. He ran the addressograph plates out for the bills they sent out. They used to send him after the mail, and I would see him do general chores they might ask him to do. Someone might want him to do some little thing around the desk or something like that.

Q. He ran errands too? A. Yes.

Q. Did he come down to your office on errands?

A. Yes, sir. I kept quite a supply of stationery down there and electric light bulbs, and they would send him down there after those things. In the day-

(Deposition of Walter C. Dooley.)

time he was, after a fashion, sort of a janitor around there. It wasn't a big office—probably 1-2-3-4-5, maybe about eight people in the place, so it wasn't a large office, but to install those light bulbs or get stationery or supplies from the basement, they sent Bill down repeatedly. [74]

Mr. Lytle: That is all.

Mr. Meindl: That is all, Mr. Dooley.

J. A. HENNESSY

a witness of lawful age, having been first duly sworn by the Notary Public, testified as follows:

Direct Examination

By Mr. Meindl:

Q. Would you state your name, please?

A. John A. Hennessy.

Q. And where do you live, Mr. Hennessy?

A. At the present time I live at 5316 Grand Avenue, Minneapolis, Minnesota.

Q. Minneapolis, Minnesota. And what is your occupation?

A. Auditor of stores and garages for Northern States Power Company.

Q. How long have you been with the Company?

A. Since 1913.

Q. Were you ever stationed at Minot, North Dakota? A. Yes, sir.

Q. Are you acquainted with William V. Mahoney the insured in this case?

(Deposition of J. A. Hennessy.)

A. I have a very clear recollection of Mr. Mahoney at the time I first worked with him. I first knew him just to say "hello" around town—it seems to me prior to the war but I wasn't personally acquainted with him at that time. I really became acquainted with him after the war.

Q. Where did you get acquainted with him then?

A. Of course, Minot was not a large town. I became acquainted with him through the American Legion and ex-service men activities.

Q. Mr. Mahoney was employed by your company as I understand it?

A. Yes, sir, he was. [75]

Q. What was your capacity at the time?

A. I was chief clerk in the accounting office in Minot, North Dakota.

Q. You had the supervision and control of Mr. Mahoney's work?

A. There was a statistician, our accountant, who was my immediate supervisor, but I to a great extent directed his work and had charge of his activities.

Q. Mr. Hennessy, would you tell the court and jury what you noticed and observed about Mr. Mahoney when he was employed under you there in Minot?

A. Should I go into length in the question?

Q. Yes.

A. When he came to work for us he was one of the boys about town who came back from the army and our post was trying to place everyone

(Deposition of J. A. Hennessy.)

who had connections with the war and I, personally, knew him at that time. He came to work for us as a meter reader, and when he wasn't reading meters he was a general office man doing messenger or office boy work, working on the addressograph and running errands, and various things of that kind. His work was satisfactory to a certain extent, but he had a peculiar temperament. My Recollection is that anything I gave him to do, he would do; he was honest and conscientious. As soon as he had done what he was told to, he was hard to find; he would more or less leave the office—not the building—you would have to go and find him.

Q. Where would you find him?

A. Various parts of the building—in the basement at the front, and on the second floor.

Q. What would he be doing?

A. Just sitting and apparently thinking, kind of a blank expression on his face; but you would call him and he would be right back on the job again.

Q. Would you state as to the frequency of that hiding out?

A. I couldn't say. Of course, when he was reading meters, he [76] would do a definite job at this. That would be about a week out of the month and then we would use him for a general office boy, and he wasn't around except when you went and found him.

Q. How about in reference to the accuracy of his work?

(Deposition of J. A. Hennessy.)

A. He was a very good meter reader. I don't recall any complaints about the accuracy.

Q. How about his other work?

A. We didn't put him on work requiring accuracy. We would put him on errands, etc.

Q. Tell us about whether or not he associated with the other employees?

A. He was pretty much of an "aloner". He would visit with the other employees occasionally. He wasn't entirely alone but, unless he had something definite to talk about, he didn't hang around with the other employees at all.

Q. Did you ever observe Mr. Mahoney when he din't realize that he was being observed?

A. I don't think I ever did except when I would go looking for him, and find him staring out the window or staring into space.

Q. Mr. Hennessy, did you ever hear him express his thoughts with regard to what the other people in the office were thinking?

A. He was difficult to handle. He seemed to take prejudice against certain people and I told him not to mind them, but he didn't come to me with troubles much. He didn't confide in me much.

Q. Just one question. You have testified about service men. Are you a service man yourself?

A. Yes, I am.

Q. Would you tell the court and jury if this fact had anything to do with employing Mr. Mahoney?

(Deposition of J. A. Hennessy.)

A. I think that it had a lot to do with my putting him to work and keeping him working. In those days we were very sympathetic towards each other and tried to help each other, and I [77] would say it had considerable to do with both.

Q. Mr. Hennessy, in the absence of sympathy or feeling about being a world war veteran, would you now hire a man of the capacity Mr. Mahoney had at the time Mr. Mahoney worked for the company?

A. I would not personally and, of course, our company rules are more stringent than they were in those days, even though my sympathy were with him.

Mr. Meindl: You may cross examine.

Mr. Lytle: I don't think there is any cross examination. Yes, I do want to ask one or two questions of cross examination.

Cross Examination

By Mr. Lytle:

Q. You said you employed Mr. Mahoney after the war, Mr. Hennessy? A. Yes, sir.

Q. When did you employ him?

A. It was in the spring and summer of 1920 to the best of my knowledge.

Q. How long did he work for you?

A. He worked for us for over a year and he left our employ at that time—if I may add—with a distinct feeling of relief on my part. He left us in the summer or fall of 1921 at which time he

(Deposition of J. A. Hennessy.)
was sent West, or went West, at least he left Minot at that time.

Q. He wasn't discharged, was he?

A. Oh, no.

Mr. Lytle: That is all. No further questions.

[78]

The Court: Ladies and Gentlemen, the court will be in recess for a few moments.

(A recess was then taken, after which proceedings were resumed as follows:)

Mr. Meindl: If your Honor please, we now offer the deposition of John J. Mahoney, a deposition of a witness in behalf of plaintiff, the deposition having been taken at Milwaukee, Wisconsin on May 27, 1942, and in view of the fact, your Honor, that there is only one deposition it is agreed that we should read the questions and answers here. [79]

(The deposition of John H. Mahoney, Plaintiff's Pre-Trial Exhibit No. 5, was then read to the jury; said deposition, omitting all formal parts, is in words and figures as follows, to-wit:)

JOHN H. MAHONEY,

being first duly sworn on oath by Charles D. Ashley, Notary Public in and for Milwaukee County, Wisconsin.

Examination by Gerald J. Meindl:

Q. Would you state your name, please?

(Deposition of John H. Mahoney.)

A. John J. Mahoney.

Q. Where do you live, Mr. Mahoney?

A. 2319 West State Street.

Q. In Wilwaukee, Wisconsin? A. Yes.

Q. Where do you work?

A. Lakewide Bridge and Steel.

Q. Here in Milwaukee, Wisconsin?

A. Thirty-two hundred something Villard Avenue—3200 Villard Avenue.

Q. Are you acquainted with the William V. Mahoney in this action? A. Yes.

Q. What relation, if any, is he to you?

A. Brother.

Q. Prior to the last World War, Mr. Mahoney, where were you living?

A. Minot, North Dakota.

Q. And where was your brother, the insured, in this case, William V. Mahoney, living prior to the last World War? A. Minot, North Dakota.

Let the record show that your brother entered the army on July 13, 1917.

Q. What was your brother doing before he went into the army?

A. He was working at odd jobs, was working mixing mortar. [80]

Q. Would you tell the court and jury what you noticed and observed about your brother's physical condition before he went into the army?

A. As far as I know, he was perfect, in good health. Everything was alright. He would have

(Deposition of John H. Mahoney.)

to be in good shape to do the work he was doing.

Q. Was he working or not working at the time he went into the army? A. He was working.

Q. Could you also tell us what you noticed and observed about your brother's mental condition prior to going into the army?

A. He was perfectly normal as far as I can see. He was in good health and in normal physical condition.

Q. Now, Mr. Mahoney, did you ever notice anything unusual about his actions prior to his going into the army? A. No.

Q. Mr. Mahoney, when did you first see your brother, as well as you can recollect, after he entered the army on July 13, 1917?

A. In January, the month of January, 1919.

Q. What was the occasion of your seeing him at that time? A. My father was dying.

Q. Where did you see your brother?

A. You mean what place?

Q. What I want, Mr. Mahoney, is for you to tell the court and jury what was the occasion of seeing your brother, where, what site, etc.

A. He came home when my father was dying at Minot, North Dakota in the month of January, 1919. You mean if I met him at the train?

Q. Was your brother still in the army service?

A. Yes.

Q. Now, if you would explain just where in Minot you first [81] saw your brother on this occasion.

(Deposition of John H. Mahoney.)

A. In the first place, I met him at the train.

Q. Did anyone else meet him outside of yourself? A. My brother, James.

Q. Now will you explain the happenings of that meeting?

A. Well, we sent him a wire to Fort Sheridan to come home, that my father was very low and the first word we got from him said he was in Minneapolis and will be home on No. 1 on a certain day. So my brother James and I went down to meet him. When the train pulled in the passengers were unloaded from the day coach—Well, when all the passengers got off the day coach and he wasn't there, I thought I would walk to the rear of the train toward the sleeper. As I walked back there a middle aged couple was helping him along the side of the train. He was walking with a cane and these two people were helping him, so we helped him into the depot and I said I would call a cab. It's no use, he said, I can't ride in a cab. I can't sit down. —So he says, 'don't call a cab, I'll have to walk.' So my brother James and I helped him to walk about four blocks, as far as the Hotel Leland—there we had to rest a while. So we rested about thirty minutes and then we continued on home, it was about five blocks.

Q. Now, Mr. Mahoney, at the time you met your brother, William, at the train and on this walk home, did he make any complaints to you?

A. He said his back hurt him, he was in terrible shape and very much pain.

(Deposition of John H. Mahoney.)

Q. Was there evidence of that pain in addition to his statement, I mean, by his expression, by his face?

A. Well, he could hardly walk, he was in awful pain and naturally, if in pain, your face is——

Q. Will you go ahead and tell what you noticed, any pain? [82]

A. Well, his face was long, aggravated so to speak.

Q. How long was your brother home there in Minot, North Dakota, on this furlough at this particular time?

A. In my opinion, about five or six weeks.

Q. Would you tell the court and jury what, if anything, you observed about his physical condition while he was home during that period?

A. Well, he was very irritable, nervous, cranky.

Q. Mr. Mahoney, about his physical condition, what, if anything, did you observe?

A. Well, he was all bent over, crippled up, he could hardly straighten up. He had a brace on and I had to help him put the brace on and take it off, help him with his trousers, shave him, and——

Q. Where was that brace on his body, on his back?

Let the records show that the witness demonstrated where the brace was by putting his hands around the middle of his back.

Q. Now, Mr. Mahoney, if you would tell the court and jury what, if anything, you observed

(Deposition of John H. Mahoney.)

about your brother's mental condition during this furlough?

A. Well, he was changed considerably since before he went over seas. He had a tendency to tease but was now very irritable and nervous; everything seemed to bother him; he was very touchy. My daughter was about three years old and she had some dolls she used to play with. He used to tease her all the time. She used to set these dolls up and he would knock them over.

Q. Did he ever do that prior to going into the army? A. No.

Q. Would you tell us how he seemed to react with regard to his association with other people?

A. Before he went over seas, he used to go to dances and drink a little, but when he was home he didn't seem to [83] care for anything.

Q. What did he do?

A. He just sat around the house and would listen, with a stare on his face. You would have to talk to him several times to get an answer out of him, you know.

Q. Did he associate with other people during this furlough?

A. Not much, he would go downtown once in a while and he would stay about twenty minutes and then wanted to go back home.

Q. Where did he stay most of the time during this furlough?

A. At home with my mother.

Q. And what would he do at home?

(Deposition of John H. Mahoney.)

A. He would just sit around the house and not carry on any conversation—just seemed to imagine everybody was bothering him,—somebody after him.

Q. Did you testify someone was after him? Would you explain on what you based that?

A. He would think someone was trying to—kind of hard to explain.

Q. Just in your own words, Mr. Mahoney, what would he say that made you believe that?

A. Well, I can't just explain that he was different.

Q. What, if anything, did you notice about his conversation?

A. Very rambling, he would be talking about one subject and switch over to something else—couldn't make head or tail.

Q. What, if anything, did you notice about his facial expression?

A. Well, he would sit and stare, dream, and didn't seem to want to talk to anyone.

Q. What, if anything, did you notice about your brother during this furlough in regard to his facial expression, particularly with reference to his mouth? A. I never watched it very close.

[84]

Q. Well, Mr. Mahoney, would you tell us whether you noticed, if anything, with regard to his temperament, that is was he sober?

A. He was sober, he was not jolly, kind of remorseful.

(Deposition of John H. Mahoney.)

Q. What, if anything, did you notice about his nervous condition? A. He was very irritable.

Q. Now, Mr. Mahoney, if you would compare what you noticed about his mental condition during this furlough as compared to what you noticed just priod to his going into the army?

A. Well, one thing I noticed. Before going into the army he was very liberal. When my father died the family wanted to hire another car or two for the funeral. I was a little short of cash and so we asked my brother. He said no, he would not take the money out of the bank. I thought this was very unusual because——

Q. Well, Mr. Mahoney, you have testified that during this furlough he and your young daughter —And further, you testified he was irritable, he did not want to be around people, that his conversation was rambling, and disconnected, that there was a vacant stare on his face and he felt people were against him, and he was nervous. Now, were any of these things present in his mental make up prior to going into the army? A. No.

Q. Mr. Mahoney, have you seen your brother, William, since this furlough? A. No.

Mr. Meindl: You may cross examine.

Cross-Examination

By William M. Lytle:

Q. Mr. Mahoney, you say he was home in January 1919?

A. To the best of my knowledge, I am not sure, 1919 or 1920.

(Deposition of John H. Mahoney.)

Q. Could it have been 1920? A. Yes.

Q. Could it have been 1921? [85]

A. I don't think so.

Q. Could it have been January 1918?

A. No, it could not.

Q. Well, had your brother been in—strike that.

Q. Did you know that your brother had an injury to his back while in the service? A. Yes.

Q. How did you know?

A. I didn't know that he had an injury until he came back from over seas because he never informed us that he was injured until he was in New York—that he was seeing the sights on a stretcher.

Q. Do you know when that was?

A. About the time the Armistice was signed.

Q. You mean—November 1918?

A. If I am not mistaken, I think so.

Q. Did you know when your brother arrived in New York? A. I can't say definitely.

Have the records show that he did not get back from overseas until May 1919.

Q. Do you still want the court and jury to understand that he came home on a furlough in January 1919?

A. It must have been 1920. I was mistaken because, as I said, I can't say definitely.

Q. Then, if that is true, do you think it might have been January 1920?

A. I think it might have been, but I am not positive.

(Deposition of John H. Mahoney.)

Q. Your memory is not as good as it was right after it happened, of course.

A. No, but am pretty positive it was in January 1920 because that was when my father died.

Q. Well, don't you know the year your father—— A. 1920.

Q. Sir? A. 1920. [86]

Q. So you were mistaken when you thought it was 1919 when your father died? A. Yes.

Q. Do you recollect the place and time of your borther's trip home on furlough because of the time your father was in the hospital?

A. Yes, but it may have been 1919 or 1920, I am not positive.

Q. Now, when your father came home on this furlough in January 1919 or 1920 at the time your father was dying in the hospital, you saw he was suffering with considerable pain from his back; as a matter of fact when you first saw him after the train came to a stop, several middle aged people were helping him—a middle aged man and woman. Did he have pain the whole time he was home, was he stooped over very much?

A. He stooped like this.

Let the records show that the witness demonstrated and was stooped over about 45 degrees.

Q. That's all, I think.

Mr. Meindl: That is all, Mr. Mahoney. [87]

Mr. Meindl: If your Honor please, the plaintiff

offers the deposition taken by the defendant as a defendant's witness at Seattle, Washington on June 29, 1942, the testimony of Francis Patrick Mahoney.

The Court: This is the one that has Exhibit 8-A attached to it, is it not?

Mr. Meindl: If your Honor please, not of this witness, no. [88]

(The deposition of Francis Patrick Mahoney, Defendant's Pre-Trial Exhibit No. 8, was then read to the jury; said deposition, omitting all formal parts, is in words and figures as follows, to-wit:

FRANCIS PATRICK MAHONEY,

was duly sworn to testify the truth, the whole truth, and nothing but the truth, testified as follows:

Direct Examination

By Mr. McGan:

Q. You may state your name?

A. Francis Patrick Mahoney.

Q. You live in Everett, Washington?

A. Yes, sir.

Q. How long have you lived in Everett?

A. About 18 months.

Q. Are you any relative of William V. Mahoney? A. Yes; he is my brother.

Q. Where were you residing in 1920?

A. I believe in Minot, as nearly as I can remember.

Q. Minot, North Dakota?

A. Yes, Minot, North Dakota.

(Deposition of Francis Patrick Mahoney.)

Q. State, if you know, whether or not William V. Mahoney was living there at that time?

A. Well, I would not say to the date, you know, but he was living there, I think, at that time; I am not sure.

Q. Do you remember when William V. Mahoney was discharged from the Army?

A. No, I do not.

Q. Were you at Minot at that time?

A. No, I was not.

Q. Did you return after that? A. Yes.

Q. About how long after that? [89]

A. Oh, I don't know; I imagine about a year.

Q. Did you remain there for some time?

A. Yes. I stayed there, you know, I would stay three or four months and leave again.

Q. You saw your brother William during this period that you were home after he was discharged from the service? A. Yes, I believe I did.

Q. Do you remember whether or not he was living at home at that time?

A. No. He was living uptown in an apartment.

Q. You may state, if you know, whether or not he was employed at that time?

A. Why, he was employed at the — the only place that I ever knew he was employed was at the Consumer's Power.

Q. Was that at Minot, North Dakota?

A. Yes.

Q. Now, did you observe your brother, particu-

(Deposition of Francis Patrick Mahoney.)

larly with reference to any physical or mental condition he may have had when he got home from the service?

A. Yes. He was awfully nervous. You know, he wasn't the same as when he left; he was in a changed manner.

Q. Explain what you mean by that?

A. Well, his actions. He acted funny, you know, and nervous.

Q. Now, that word "funny" will not mean much to the jury, Mr. Mahoney. Just what do you mean?

A. Well, irritable and nervous.

Q. Was he irritable to the point of being unpleasant?

A. No, I would not say that. No*w*, he was not so unpleasant.

Q. How frequently would you notice his irritability?

A. I never say him very often—whenever I would see him.

Q. Would that be apparent every time you saw him?

A. Well, you know I can't—I don't remember, you know, [90] every time; but when I met him, you know, that is the way he felt—that is the way he acted.

Q. You may state whether you talked to your brother frequently during this period?

A. Yes, I have talked to him.

Q. Was his conversation intelligent?

(Deposition of Francis Patrick Mahoney.)

A. Well, in a way, and in another way it was not. He was, you know, he would kind of ramble off, start to say something and say something else.

Q. You say he rumbled off. What do you mean by that?

A. Oh, he would talk about one thing, and maybe he would change to another.

Q. Did you notice anything else about him with reference to his mental characteristics or make-up at that time?

A. No, I can't remember anything else.

Q. Do you know whether or not he was ever in trouble on anything while he was at home while you were there?

A. No, he never was in trouble, I don't believe —that is, not while I was there.

Q. State whether or not he was, if you know, under the care of a doctor at that time?

A. Well, if he was, I never knew it.

Q. Will you, if you can, describe the appearance of your brother about that time?

A. Well, he was, you know out of shape. He had his back broke. He was rather thin from lying in hospitals.

Q. Did he keep himself clean?

A. Oh, yes, he kept himself clean.

Q. Was he always well dressed?

A. Yes, he was always well dressed.

Q. Do you, Francis, have an opinion as to whether or not your brother was sane or insane during this period?

(Deposition of Francis Patrick Mahoney.)

A. Well,—does it have to be sane or insane?

Q. Just answer the question, Mr. Mahoney.

[91]

A. Well, of course, you know I would not know about that, because——

Q. I asked you if you had an opinion, Mr. Mahoney. A. I think he was all right.

Q. Now, have you seen your brother William since he left Minot?

A. Yes, I seen him in Portland.

Q. Did you ever see him again in Minot after this first period of his presence?

A. Yes. He was back there once on a furlough.

Q. What do you mean by "furlough"?

A. Why, a vacation—just a vacation.

Q. And when was that time, if you recall it?

A. Do you mean after he was discharged?

Q. Yes.

A. Well, I do not remember what year it was.

Q. Do you know how he came back?

A. Why, I think he came back on the train, so far as I know.

Q. Was he accompanied by anyone?

A. I don't believe so.

Q. Particularly, I might say, was he accompanied by his wife?

A. No. His wife was not with him.

Q. Now, I will ask you what you know about his condition with reference to his mental health. What, if anything, did you notice about his mental health then?

(Deposition of Francis Patrick Mahoney.)

A. Well, he was more nervous than he was before.

Q. Did you observe any change in him at that time?

A. Oh, I observed that he was more nervous and touchy, you know, and cranky.

Q. Now, when did you next see William?

A. In Portland. [92]

Q. Do you remember what year that was?

A. I think it was 1937—in the fall of 1937.

Q. Did you notice or observe his condition with reference to his mental condition at that time?

A. Yes. He was just like he was last, only worse.

Q. Did he seem to you he was getting worse?

A. Yes.

Mr. McGan: That is all.

Cross Examination

By Mr. Meindl:

Q. Mr. Mahoney, when you saw your brother in Minot following the war, when was it your first saw him before that? How long had it been that you had seen him, and where?

A. Oh, that is when he was home on a furlough.

Q. While he was still in the Army?

A. While he was still in the Army.

Q. And what was the occasion of that furlough? That is, how did he happen to come home?

A. Well, he had come home on a visit, I think. That was about—I should say my dad died about

(Deposition of Francis Patrick Mahoney.)
that time, in 1920, and I don't know—I can't remember. He was there during the funeral or before that.

Q. Were you home at that time?

A. Yes, I was.

Q. Now, Mr. Mahoney, you testified that when you saw your brother after he got out of the Army, that he was awfully nervous; that he was not the same as when he left to go into the Army; that he was a changed man, queer actions, acted funny. Now, did you notice any of those things when he was home there on the furlough?

A. Well, when he was home on furlough, he was wearing the brace, you see, and he was sick. [93]

Q. Where did he wear the brace?

A. He wore it on his back.

Q. Did you see it?

A. Yes. I would take it off and put it back on.

Q. Would you describe the brace, please? How big was it?

A. Oh, it was—it went all the way around his body and up under his arms, you see, to hold his shoulders up, and it was buckled up, if I remember right, right along the sides, because it was so that he could not reach it to unbuckle it, even if he had wanted to. It was buckled somewhere in the sides.

Q. How did he carry himself at that time? How did he get along?

A. Well, he had—whenever he went out for a walk, I went with him. It was in the winter and it was slippery and he might fall down. It seems

(Deposition of Francis Patrick Mahoney.)

as though he had a cane; if he did go any place, you know, around the house, he had a cane. He had that brace on.

Q. Did he shave himself?

A. No, I shaved him.

Q. How about getting his clothes on?

A. I had to dress him and undress him.

Q. Do you remember how long he was at home at that time? A. Two weeks.

Q. Mr. Mahoney, did you notice that your brother was very nervous and irritable during that period of time, too? A. Yes, he was nervous.

Q. Did you notice that he kind of kept to himself?

A. Yes. He was in the house most of the time.

Q. Did he go out and associate with his friends?

A. No. When he was there at that time, it was winter and it was slippery, and whenever he would go any place, I would have to go with him to see that he would not fall [94] down.

Q. Did you notice that he was kind of suspicious with members of the family and other people?

A. Yes, he was kind of funny that way.

Q. Now, Mr. Mahoney, when your brother came out of the Army there in Minot and was with the power company there, where were you living?

A. I was living with my sister, I believe.

Q. Was your brother living at the same place?

A. No. He had an apartment at that time uptown.

Q. But how frequently would you see him?

(Deposition of Francis Patrick Mahoney.)

A. Oh, once every two weeks, I believe.

Q. When you saw him, did you notice that he was very irritable and nervous?

A. Yes, he was.

Q. Did you notice that he was suspicious of members of the family and other people?

A. Yes, he was.

Q. Did you notice that your brother was depressed and sad in his actions?

A. Oh, I would not say he was sad. He was hurt, you know, and he was not happy or anything like that.

Q. Did you notice that his conversation was rambling and disconnected?

A. Oh, it was a little funny, you know. He talked kind of funny at times, and sometimes he would talk all right.

Q. Was it different than it was before he went in the Army?

A. Oh, yes, it was different, yes.

Q. Did you notice an entire change of personality in your brother when he returned from the Army as to what it was before he went in the Army?

A. Yes.

Q. Now, the next time you saw your brother was back in Minot when he came there for a visit, as I understand it? [95] A. Yes.

Q. That was several years later, was it not?

A. Yes, I think it was '27; something like that.

Q. How long was he there that time?

A. About two weeks.

(Deposition of Francis Patrick Mahoney.)

Q. How frequently did you see him on that visit?

A. I see him about once or twice while he was there.

Q. Did you notice the same things then that you had noticed when he first came home from the Army? A. Yes.

Q. Now, the next time you saw him was in Portland, as I understand, about 1927 or 1928?

A. Yes, that is right.

Q. How long were you in Portland at that time?

A. About three months.

Q. Were living at the same place your brother was? A. No, I was not.

Q. About how often did you see him?

A. About once every two weeks.

Q. Did you notice the same things that you had noticed in North Dakota? A. Yes.

Q. When he first came home from the Army?

A. Yes.

Q. Have you ever seen your brother since that time?

A. Yes. I saw him in the hospital in Roseburg, Oregon, the last time.

Q. How many times did you see him down at the Roseburg Hospital? A. I saw him twice.

Q. That was the Veteran's Hospital, was it not?

A. Yes, it was.

Q. Now, would you tell us whether or not you noticed the [96] same things wrong with your brother there at the Roseburg Hospital that you

(Deposition of Francis Patrick Mahoney.)

had noticed when he first came home from the Army?

A. Yes, he was about the same, or worse.

Q. Now, Mr. Mahoney, counsel for the government asked you to give an opinion in regard to your brother's state of mind when he came home from the Army. Isn't it your opinion that there was something wrong with his mind when he first came home, that was different?

A. Well, he acted queer.

Q. But you don't hold yourself out as an expert as to whether a man is sane or insane, do you, Mr. Mahoney? A. Oh, no, I do not.

Q. But you did notice that something was different in the way he acted and the way his mind seemed to work, is that right?

A. Yes, his actions were different.

Mr. Meindl: I believe that is all.

Redirect Examination

By Mr. McGan:

Q. Mr. Mahoney, you testified on cross examination that you saw your brother in Portland in 1927 and 1928. Do you mean that, or did you mean to say 1937? A. In '37.

Q. '37 and 1938? A. Yes.

Mr. McGan: That is all. [97]

Mr. Meindl: If your Honor please, the plaintiff now offers part of the deposition of James Edward

Mahoney, referring only to the cross-examination taken of the defendant's witness.

Mr. McGan: If the Court please, we will object unless he wants to offer it all.

Mr. Meindl: Possibly they can offer the other part, your Honor.

The Court: Well, if you offer it I am going to permit the admission of this other document for the purpose of impeachment.

Mr. Meindl: Very well, your Honor. We will offer the cross-examination.

The Court: You understand, of course, I am not ruling that it is impeaching at all, but simply if you offer the cross-examination I will permit the document to go in.

Mr. Meindl: Well, we understand how your Honor is going to rule, but we do call your Honor's attention to the fact that that is part of the direct examination.

The Court: Yes.

Mr. Meindl: This is the deposition of James Edward Mahoney, taken by the Government at Seattle, Washington on the same day as the other deposition. We are offering the cross-examination by *my*self. [98]

The cross-examination of the

DEPOSITION OF JAMES EDWARD MAHONEY,

Defendant's Pre-Trial Exhibit No. 8, was then read to the jury; said cross-examination, omitting

(Deposition of James Edward Mahoney.)

all formal parts, is in words and figures as follows, to-wit:

Cross Examination

By Mr. Meindl:

Q. Mr. Mahoney, when your brother came home from the Army, did you notice that he was suspicious of members of the family?

A. I would not say that he was suspicious, in those words.

Q. Well, describe how he was in that respect.

A. Well, irritable, and feeling that he was getting the worst of things. That was the opinion that he expressed.

Q. Did you notice that he didn't pay much attention to what was going on around him; that he seemed to live in a world of his own?

A. He never took a great interest in any one particular thing.

Q. How was he before he went in the Army, in that respect?

A. He was okeh as far as I could see. I would say that he was normal and healthy, with good habits.

Q. How about his mental actions before he went in the Army?

A. Well, he was just like the average person.

Q. Did he associate with people before he went in?

A. Yes, he associated more with people before he went in.

(Deposition of James Edward Mahoney.)

Q. Did you notice any change when he came home, in that respect?

A. Yes, in that respect, that he didn't associate with friends, but in general, he never had any real friends. That is, he would talk to different people and speak to them; but he never had what you would say a main pal [99] that he went with like he did before he went into the Army.

Q. Did he ever feel that people were against him before he went in the Army?

A. I never noticed that feeling.

Q. Was there a change in that respect when he came home?

A. Yes. I would say there was a decided change.

Q. How was his conversation before he went into the Army? A. Normal.

Q. Did you notice any change in that when he came home?

A. Yes. I noticed that he talked, and skipped from one subject to the other after he returned, in the conversation.

Q. But would you say there was an entire change of personality when he came home from what there was before he went in the Army?

A. I would say there was a change in his personality, yes.

Q. And did you notice the same things which you had when you saw him in Portland in 1923?

A. Yes, I did.

(Deposition of James Edward Mahoney.)

Q. Did you notice the same things when you saw him in North Dakota in 1927?

A. Yes, I noticed that.

Q. Aside from those few minutes you saw him in 1937 in Portland, Oregon, had you seen him since 1927, to this time?

A. No, I haven't; I haven't.

Q. On direct examination you mentioned that your brother got into a lot of quarrels and fights. When did that take place?

A. In 1921 or '20, when he was home from Oregon, and again in Portland on a couple of occasions that I would see him. [100]

Q. Was he that way before he went into the Army?

A. No, he wasn't that way, I would say.

Q. You say he got out of patience with you when he came home from Oregon. Describe what happened, will you, please?

A. Well, it was just family affairs that would come up, and he would think that he was getting the worst of it, and after carrying on a conversation for five or ten minutes, why, he would become angry and, of course, we would realize his condition, and I would stay away from him for that reason.

Q. Was he like that before he went into the Army? A. No, I wouldn't say that he was.

Q. Did you know of any work that your brother William did except that power company work in Minot? A. None other to my knowledge.

Q. Do you remember that your brother came

(Deposition of James Edward Mahoney.)

home on a furlough when he was still in the Army?

A. Yes, I recall it.

Q. Do you recall just about when that was, what year? A. It was about 1919, I believe.

Q. Were you at home at that time?

A. Yes.

Q. What did you notice about your brother on that occasion?

A. His mental or physical condition?

Q. Well, both.

A. His physical condition was very poorly, because he walked with the aid of a cane, and he would move very, very slowly, and it took him, oh, say, at least half a minute to sit down or get up again. He had to brace himself and pull himself up. He could not use crutches because it was a strain on his back. He had to support himself with a cane because he was—well, so as to [101] enable him to move around up there with the cane.

Q. Was he able to dress and undress himself?

A. Not on the furlough, no. The members of the family helped him.

Q. How about shaving?

A. We shaved him. I shaved him on a couple of occasions.

Q. Now, did you notice when he was home on the furlough that he was nervous and irritable?

A. He was not so much then, because he was—I would say he was ill then and spent a great deal of time in the bedroom in bed.

Q. Did you notice any of these other things

(Deposition of James Edward Mahoney.)
you have testified to that you noticed when he came home that were present when he was there at home on his furlough?

A. Well, I know that he was irritable, but not to the extent that I noticed it afterwards.

Mr. Meindl: I believe that is all.

Mr. McGan: That is all.

Mr. Meindl: Just one more question.

Q. (By Mr. Meindl) By whom are you employed at the present time, Mr. Mahoney?

A. The Quartermaster Corps of the Army.

Q. Here in Seattle, Washington?

A. Yes.

Mr. Meindl: Thank you. [102]

Mr. Meindl: If your Honor please, that completes the depositions, and the plaintiff desires to offer into evidence the Pre-Trial Exhibit No. 12, being the honorable discharge.

The Court: Admitted. [103]

The honorable discharge of William V. Mahoney, Plaintiff's Pre-Trial Exhibit No. 12, was received in evidence, and is in words and figures as follows, to-wit:

PLAINTIFF'S PRE-TRIAL EXHIBIT No. 12

HONORABLE DISCHARGE FROM THE UNITED STATES ARMY

War Department, A.G.O., May 31, 1923.

The records show that this soldier was assigned

serial number 47,889, and that he was born in Flandreau, South Dakota, and so much of this certificate as shows otherwise, is in error.

M. J. O'BRIEN
Adjutant General

State of North Dakota.
Adjutant General's Office Bismark,
Paid in full, $700.00 Dec 20 1924.
Under the provisions of chapter 206, Session Laws of 1919, as amended.

G. A. FRASER
Adjutant General

To All Whom It May Concern:

This Is to Certify, That William V. Mahoney #241760, Private, Company #3, Service Battalion, Army Schools, A. E. F. The United States Army, as a Testimonial of Honest and Faithful Service, is hereby Honorably Discharged from the military service of the United States by reason of S.C.D.L.D. 4th Ind. H.C.D., Chicago, Ill. May 14, 1920.

Said William V. Mahoney was born in Flanders, in the State of South Dakota. When enlisted he was 21 3/12 years of age and by occupation a laborer. He had blue eyes, auburn hair, fair complexion, and was 5 feet 11 inches in height.

Given under my hand at U.S.A.G.H. #28, Fort Sheridan, Ill. this 22nd day of May, one thousand nine hundred and twenty.

H. F. CURTIS
Major, Medical Corps, U.S.A.
Commanding.

Enlistment Record

Name: William V. Mahoney #241760

Grade: Private Enlisted, or Inducted, July 15, 1917, at Minot, North Dakota.

Serving in First enlistment period of date of discharge. [104]

Prior service: None.

Noncommissioned officer: Never.

Marksmanship, gunner qualification or rating: Not rated.

Horsemanship: Not mounted.

Battles, engagements, skirmishes, expeditions: A. E. F.

Decorations, Medals, Badges, Citations: None.

Knowledge of any vocation: Laborer.

Wounds received in service: None.

Physical condition when discharged: Poor.

Typhoid prophylaxis completed—Unknown

Paratyphoid prophylaxis completed—Unknown

Married or single: Single.

Character: Excellent.

Remarks: No A.W.O.L. No absence under G.O. 31/12 or G.O. 45/14. Entitled to Sixty Dollar bonus. Entitled to travel pay to Minot, North Dak. Served in Infantry 7/15/17 to 5/22/20. Served in France. Left U. S. Dec. 15, 1917. Returned May 25, 1919.

Signature of soldier: William V. Mahoney.

H. F. CURTIS
Major, Medical Corps U.S.A.
Commanding Det. of Patients

Soldier paid travel pay at rate of five cents (5c) per mile under Act of Congress approved February 28, 1919.

I Certify that a Bronze-Silver Victory Button Was Issued on May 22, 1920.

GEO. R. RANDALL
Captain, M.C.

Finance Office
Fort Sheridan, Ill.

May 21 1920

Paid in full $124.95 including $60.00 Bonus authorized by Revenue Act Approved February 24, 1919.

R. S. AMOS ?
2nd Pt. Q.M.C. Finance Officer

[105]

(Plaintiff's Exhibit No. 4, which consists of a certificate signed by J. A. Ulio, Major General, The Adjutant General, and 134 photostats, is the service and medical record of the insured during his army service. All instructions contained in such record, blank pages not filled in, temperature charts, duplications, and other irrelevant matter have been omitted. The material portions of said exhibit are in words and figures as follows, to-wit:) [107]

18V

CERTIFICATE OF DISABILITY FOR DISCHARGE

of Mahoney, William—47-889. Private Co. 3 Serv. Bn. Army Schools.

Plaintiff's Exhibit No. 4—(Continued)

Enlisted July 15, 1917 at Minott, N. D. by Unknown Temp. Service Record.

Age at enlistment 21 yrs. and 3 mos.; occupation, Laborer.

Prior service: None.

Recommended for discharge on account of crushing fracture of 12th dorsal and 1st & 2nd lumbar vertebrae.

Became unfit for duty from present disease or injury Nov. 11/18

Disease contracted or injury received Nov. 11, 1918. Langres France.

When disability arose soldier was with command.

Cause of disease, or circumstances under which it appeared: Accidentally incurred. No further evidence re incurrence of disability obtainable. One copy of affidavit attached.

Disability was incurred in line of duty.

(Signed) N. F. CURTIS
Major, Med. Corps.
Commanding Det. Patients.

USA.GH.#28
Ft. Sheridan, Ill.
May 11, 1920. 2300 1b

[125]

I certify that I am applying for this discharge under the provisions of CL 345 SGO

WILL V. MAHONEY

REPORT OF BOARD OF MEDICAL OFFICERS

From a careful consideration of the evidence

Plaintiff's Exhibit No. 4—(Continued)

obtainable in the case and a critical examination of the soldier,

We Find: That he is unfit for service as a soldier because of

1. Crushing fracture of the 12th dorsal and the 1st and 2nd lumbar vertebrae. Accidentally incurred by being hit on the head by 3 sacks of potatoes on Nov. 11, 1918, at Langres, France, L.O.D. Yes (soldier's statement). Present condition no motion in the lower dorsal and lumbar region left; marked scoliosis of the dorsal and lumbar region. Maximum amount of improvement from treatment has not as yet been obtained; soldier is being discharged under the provisions of CL 345 SGO.

That the disqualifying disability did not exist prior to enlistment and did originate in line of duty.

That the medical officer who enlisted the soldier is not blamable (867 A.R.).

We Therefore Recommend

That the soldier be discharged for disability which was incurred in line of duty.

Length of time case has been under observation of one or more members of the board seven days.

In view of occupation, to what extent is he disabled from earning subsistence? eighty per cent.

Plaintiff's Exhibit No. 4—(Continued)

The soldier did not decline treatment for the relief of disability (161 A. R.).

(Signed) L. J. OWEN
Lt. Co. MC
(Signed) P. G. PETERSON
1st. Lt. MC

2301 2b

[126]

Mahoney William O
Pvt 3rd Ser Bn
22 W S Dak 1-7/12
Date of admission. Nov 11, 1918
Source of admission. By Tr CH 24 Feb 15/19
Cause of admission FS—and dislocation—11th dorsal vertebrae, accidentally incurred by being struck with sacks of potatoes while unloading same at Commercy, France. Nov. 11, 1918 [131]
In line of duty? Yes.
Disposition.
Trfd to Hosp Center, Savenay.
Date of disposition April 12, 1919.
Name of hospital, etc.
Base Hosp. #90 Chaumont (Hte-Marne) France.
(signed) OTM
2nd Lt. San C. Registrar

2183 9d

Days of treatment in current case current year	
Year, 1919	in hospital
January	31
February	28

Plaintiff's Exhibit No. 4—(Continued)

March	31
April	11
November 1918	20
December	31
Total	152

2184 10d

Mahoney William.
Pvt 3rd S. Bn and Schools.
23 W S. Dak 1.10/12.
Register No. 241760.
Date of admission. 11th November 1918.
Source of admission. Command.
Cause of admission.
FS and dislocation of 11th dorsal vertebrae, accidentally caused by a sack of potatoes falling on his back.
Hosp
In line of duty? Yes.
Disposition.
Tfd to Transport Per Auth S.O.—41 1918 HAEF with View to S.C.D.
Dte of disposition May 14, 1919.
Name of hospital, etc. [132]
Base Hospital #69.
Amer. E. F. France.
Sent with report of S. & W. for month of May 1919 From same.
(signed) CBT
Capt Med Corps.

2185 11d

Plaintiff's Exhibit No. 4—(Continued)

Days of treatment in current case, current year

Year, 1919	in hospital
January	31
February	28
March	31
April	30
May	13
November 1918	20
December	31
Total	184

2186 12d

*241760

Mahoney, William O.

Pvt 3 Sew bat.

23 W SD

Date of admission. 5-14-19.

Source of admission. USA BH # 69.

Cause of admission. Dislocation 11th dor. vert. Dislocation 11th dorsal vert. # 2013.

In line of duty? Yes.

Disposition. transferred to Debarkation Hosp N Y.

Date of disposition. May 25 1919.

Name of hospital, etc. USS Mercy. [133]

(Signed) U. R. WEBB
Comdr (MC)
Commanding

2187 13d

*241760

Mahoney, Will V.

Pvt. 3rd A. S.

Plaintiff's Exhibit No. 4—(Continued)

23 W S. Dak. 1-11/12.

Register No. 2344.

Date of admission. June 5th 1919.

Source of admission. Transferred from USA. Emb. Hosp. #5, N. Y.

Cause of admission. (Convalescent AEF)

Fracture, simple, of 10th 11th and 12th dorsal vertebrae, incurred while on duty at Langres, France on Nov. 11th 1918., a load of potatoes falling on soldier.

Hosp.

In line of duty? Yes.

Disposition. Transferred to U. S. Army General Hospital # 26, Fort Des Moines, Iowa. (*)

Date of disposition. August 20, 1919.

Name of hospital, etc. U. S. Army General Hospital No. 27 Fort Douglas, Utah.

Sent with report of S. & W. for month of Aug. 1919.

(signed) RWJ

Captain M.C.

2189 15d

Days of treatment in current case, current year	
Year, 1919	in hospital
June	26
July	31
August	20
Total	77

(*) For further observation and treatment.

2190 16d

Plaintiff's Exhibit No. 4—(Continued)

Mahoney Will V.

Pvt. 3rd A. S.

23 W S.D. 2-1/12.

Register No. 3094.

Date of admission. Aug. 22, 1919.

Source of admission. By trans. from USA Gen. Hosp. #27 Ft. Douglas Utah. (a)

Cause of admission. Convalescing from fracture, simple 10, 11 and 12 dorsal vertebra. Accidentally incurred as result of three sacks of potatoes falling upon back, while on duty in warehouse at Langres, France. (Soldiers statement)

Condition on admission: Fracture united.

Hosp.

In line of duty? Yes.

Disposition

Trans. to USA Gen. Hosp #28 Ft. Sheridan, Ill., per SO 277 Hq. USA.

Gen. Hosp. #26 Ft. Des Moines Iowa.

Date of disposition Oct 13, (b) 1919.

Name of hospital, etc. U.S.A. General Hospital #26 Fort Des Moines Iowa.

Sent with report of S. & W. for month of from same.

(Signed) W. S. SHARPE
Major M.C.

2191 17d

Days of treatment in current case, current year	
Year, 1919	in hospital
August	10
September	30

Plaintiff's Exhibit No. 4—(Continued)

October	13
Total	53

(a) SO 188 Hq. Ft. Douglas Utah. Dated Aug. 20, 1919. Orig. entry June 5, 1919.

(b) Dated Oct. 12, 1919, for further observation and treatment.

Headquarters
U.S.A. General Hospital No. 28
Fort Sheridan, Ill.
Forwarded Oct 17 1919.

CR

Registrar 2192 18d

[135]

*241760

Mahoney Will V.
Pct. 3rd A.S.
23 W S.Dak 2-1/12.
Register No. 42796.
Date of admission. Oct. 14th, 1919.
Source of admission Par 1 SO 277, Ft. Des Moines, Iowa. Oct. 13/19.
Cause of admission.

Fracture, simple, 10, 11 and 12th dorsal vertebra, accidentally incurred at Langres, France, by three sacks of potatoes falling upon back, while on duty in warehouse. Date unknown. Present condition: Fracture united. Convalescing.

Hosp.
In line of duty? Yes.

Plaintiff's Exhibit No. 4—(Continued)

Disposition.

On furlough per 106 A.R.

Date of disposition. Oct 30, 1919.

Name of Hospital, etc. Hq. U.S.A. Gen. Hosp. #28, Ft. Sheridan, Ill.

Sent with report of S. & W. for month of Oct. 1919.

(signed) EG 2193 19d

Days of treatment in current case, current year

Year, 1919	in hospital
October	17
Total	17

2194 20d

*241760

Mahoney Will V.

Pvt 3 AS

23 W S Dak 2-4/12.

Register No. 42796-46306.

Date of admission. Jan. 10, 1920.

Source of admission. From furlough.

Cause of admission.

Fracture, simple, 10, 11, and 12th dorsal vertebra. Accidentally incurred, at Langres, France, by three sacks of [136] potatoes falling upon back while on duty in warehouse. Date unknown. Present condition: Fracture united. Convalescing.

Hosp.

In line of duty? Yes.

Disposition.

On furlough Par 106 AR.

Plaintiff's Exhibit No. 4—(Continued)

Date of disposition Jan 17, 1920.

Name of hospital, etc.

Hq. U.S.A. Gen. Hosp. #28, Ft. Sheridan, Ill.

Sent with report of S. & W. for month of Jan. 1920.

(Signed) DEG

Major, MC. 2195 21d

Days of treatment in current year, current case

Year, 1920	in hospital
January	8
Total	8

2196 22d

CORRECTION CARD *241760

Mahoney Will V.

Pvt 3rd A.S.

23 W S.Dak. 2-6/12.

Register No. 42769-47068.

Date of admission. Jan. 24th, 1920.

Source of admission. From furlough.

Cause of admission.

(a) (Old) fracture, simple, 12th dorsal, 1st and 2nd lumbar vertebrae. Accidentally incurred by being hit on the head by three sacks of potatoes at Langres, France, Nov. 11/18. (Soldier's statement). Condition on admission: Marked scoliosis dorsal and lumbar.

Hosp. (b)

In line of duty? Yes. [137]

Disposition. sch:CD 4th Ind HCD, Chicago, Ill.

Plaintiff's Exhibit No. 4—(Continued)

May 15/20: Final diag: Scoliosis, marked, dorsal and lumbar region, (c)

Date of disposition May 22nd, 1920.

Name of hospital, etc.

U.S.A. Gen. Hosp. #28, Ft. Sheridan, Ill.

Sent with report of S. & W. for month of May, 1920.

(Signed) H. C. BRADFORD
Maj M.C.

2197 23d

Days of treatment in current case, current year

Year, 1920	in hospital
January	8
February	29
March	31
April	30
May	22
Total	120

(a) corrected entry.

(b) region.

(c) with complete loss of motion.

Disab: 80%. In line of duty.

Maximum amount of improvement from treatment has not as yet been obtained. Soldier is being discharged under the provision of CL# 345 SGO

2198 24d

FIELD MEDICAL CARD

Mahoney, William O.

Pvt. *241760 3rd Serv. Bn.

Plaintiff's Exhibit No. 4—(Continued)

Sick

Line of duty—Yes.

Camp Hosp. No. 24.

Date of admission Nov. 11, 1918.

Diagnosis F. & dislocation 11th dorsal vertebra.

(signed) E. H. KIRSCHBAUM
1st Lt. MC USA

By 69

Fracture & Dis. 11th dorsal vertebra—no paralysis jacket applied. Fit for move to U.S. Xray shows involvement of 1st dorsal San. lateral deviation.

E. F. DODDS
M.C. [138]

Date 4/25/19.

Examined and passed for Evac. to U. S.

R. S. FARR,
Lt. M. C.

Arrived at U. S. A. Dep. Hosp. #5, New York City.

Departed for May 25, 1919.

U. S. Army General Hospital No. 27, Fort Douglas, Utah, Jun 7 1919.

4/17/19 Neurologic illegible in both lower extremities.

No objective sensory fingings.

Reflexes are lively.

KJ-S are present and normal on both sides.

SJ san lively on left side.

No adhesions.

No involvement of organic sphincters.

Plaintiff's Exhibit No. 4—(Continued)

Date of entry Nov. 11, 1918.

Operation laminectomy 10th 11th 12th dorsal vertebrae.

Uneventful recovery.

Feb. 11—cast applied, able to sit up & walk about.

EHK

Base Hospital No. 90.

Date of entry 2-15-19.

Feb. 27.

Diagnosis.

Fracture and dislocation of 11th dorsal vertebrae, no paralysis.

(Signed) C. S. WHARTON,
Lt. M. C.
3/4/1919.

Request Xray report of region involved.

LT. L. D. McNAUGHTON,
Pres. D. B.

Admitted 5/25/19.

Evacuated 6/2/19.

Ft. Douglas, Utah. 2306 2e

[139]

CLINICAL RECORD

History of Present Disease

Nov. 11, 1918. Langres, France, 3 sacks of potatoes fell and hit him on head and shoulders and jack-knifed him.

Went to Camp 24 Hosp.

Langres—cast applied—staid there until Feb. 15, 1918.

Plaintiff's Exhibit No. 4—(Continued)

Then to Base Hosp. 90 at Chaumont, France—staid there until April 12, 1918.

New cast put on.

Then to Savaney, France Base Hosp. #69
—staid there until May 15-1918.

Then to Grand Central Palace Hosp. New York
—staid there 1 week.

Then to Fort Douglas Salt Lake City Utah
—Brace made for his back
—staid there until Aug. 20, 1918. Then to Fort Des Moines, Ia.

(over)

Mahoney, Will V. 2223 6 L

Lamenectomy at Langres France
—Nov. 11, 1918

2224

Clinical Record
Subjective Symptoms

Condition on admission:
Brace on back.
Walks with crutch.

Mahoney, Will V. 2257 7 L

Clinical Record
Ocjective Symptoms

Weight: Normal 165; Present 140.
General condition: Good.
Special senses: Neg.
Skin and mucous membranes: neg.
Glandular system: Neg. [145]
Vascular system: Neg.
Blood pressure: Not taken.

Plaintiff's Exhibit No. 4—(Continued)

Heart: Neg.

Lungs: Neg.

Genito-urinary system: Neg.

(Signed) GD.

Mahoney Will V. 2226 8 L

Clinical Record

Objective Symptoms—continued

Diagnosis of ward surgeon:

Old frac 10, 11, 12 Dorsal vertebrae from bags of potatoes falling on him at Langres, Fr. Nov. 11, 1918, while stacking them in warehouse.

L. O. D. yes.

(Signed) J. P. BLUACIEP.

Mahoney Will 2227 9 L

Clinical Record

Progress

4-7-20. Is doing better.

Now walking without brace and he walks better.

(Signed) W. J. WUMLLER.

4-20-20 Ready for discharge soon.

(Signed) W. J. WUMMLLER.

Mahoney Wm. 2228 10 L

Clinical Record

Progress

Oct. 23 Transferred into Ward 37 with no history except that which was transferred with him from Des Moines. Capt. Merrer says that is all that is required.

Oct. 25 An absolutely helpless patient when down. Can't rise, nor dress, nor wrap leggings.

[146]

Plaintiff's Exhibit No. 4—(Continued)

Oct. 27 Walks like a ghost or slips about like a mummy on skids.

Skiagram requested.

Oct. 30 On 30 da. leave furlough acct. death of father Minot, N.D.

Jan. 10 Returned looking well and several pounds (18) heavier.

Jan. 14 Request Xray.

Jan. 16 Request furlough 15 days acct. death of father.

Leaves on furlough.

Jan. 25 Return from furlough improved.

Feb. 10 Does not get around well without brace.

Feb. 25 Still wears support.

Mahoney Will 2229 11 L

Clinical Record

Objective Symptoms—continued

Liver, Neg.

Spleen, Neg.

Tenderness, Neg.

Masses, Neg.

Nervous system: Neg.

Osseous system: Neg.

Muscles and joints: Neg.

Diagnosis of ward surgeon: Audt Fracture 10th 11th 12th dorsal vertebra incurred Nov. 11 1918 at Langres, France, caused by sacks of potatoes falling down on his head and shoulders.

L. O. D. yes.

Mahoney, Will V. 2232 14 L

Plaintiff's Exhibit No. 4—(Continued)

Clinical Record

Progress

Aug. 22 Brace removed and adjusted.

Patient has difficulty in sitting down and getting up without brace.

Aug. 27-19. Patient up and about.

Feels better.

initials G. D.

Sept. 3, 1919 Transferred to Ward 7. [147]

Sept. 30, '19. Pt. gets up and about when helped some.

No pain.

Eats & sleeps well.

initials G. W. O.

Mahoney, Will V. 2233 15 L

Clinical Record

Progress

10/13/19. Is helped in & out of bed.

Walks fairly well when up and in brace.

Transfer to Fort Sheridan this wk.

initials G. W. O.

3-28-20.

Patient was injured Nov. 1918, when a pile of potatoes fell on him.

Walks with a protective gait, there is a marked kyphosis of the spine, dorsal & upper lumbar region.

No point of tenderness can be found.

To have new Xrays taken, to determine if possible the injury.

Plaintiff's Exhibit No. 4—(Continued)

Patient is extremely nervous and borders on hysteria.

(Signed) W. J. WUMLLER.

Mahoney, Will V. 2234 16 L

Clinical Record

Radiographic Report

Station Ft. Sheridan, Ill.

Date Oct. 28 1919.

From Ward 37.

To X-RAY Laboratory U. S. A. General Hospital No. 28.

Information requested: 10, 11, 192 dorsal vertebrae.

Clinical diagnosis: old frac. 10, 11, 12 vert.

CAPT. CRACROFT.

Laboratory U. S. A. General Hospital No. 28, Oct. 29, 1919.

X-ray findings: Radiogram of the vertebral column, taking in the 9, 10, 11 and 12 dorsal, and the 1, 2, 3d. lumbar vertebrae shows a marked lateral deviation at the level of the last dorsal [148] and the 1st lumbar, also the 1st and 2d lumbar, with more or less obscurity of the outline of the articulating surfaces. I am unable to determine any pathological condition of any of the dorsal vertebrae but there is.

Plate

number Size

7103½ 3BP

(Signed) B. R. LUDY,

Captain, M. C.

Mahoney Will V. 2236 18 L

pvt 3d A S

Plaintiff's Exhibit No. 4—(Continued)

In evidence a crushing fracture apparently at the 1st and 2d lumbar vertebrae and fracture of the transverse process of the 1st lumbar on the left side.

Would suggest this patient be examined again after 15 days have elapsed, attention Captain Rhudy.

2237

Clinical Record

Radiographic Report

Station Fort Sheridan, Ill.

Date January 19, 1920.

From Ward 37.

To X-Ray Laboratory, U. S. A. General Hospital No. 28.

Information requested: four lower dorsal vertebrae.

Clinical diagnosis: fracture 10, 11, 12 dorsal vert.

CAPT. CRACROFT.

Laboratory U. S. A. General Hospital No. 28, January 30, 1920.

X-ray findings: There is no pathology of the 9, 10, 11, and 12th dorsal vertebrae other than scoliosis.

However, marked haziness is observed in the region of the 1st and 2d lumbar vertebrae.

Would suggest that stereoscopic plates be made of these two vertebrae.

Plaintiff's Exhibit No. 4—(Continued)

Plate

Number	size
7103½	2BP 1CF

(Signed) B. F. HOYT,
Captain, M. C. 2238 19 L

[149]

Clinical Record

Radiographic Report

Station USA Gen. Hosp. No. 26.

Date Aug. 25, 1919.

From Lt. C. M. DeBeck Ward No. 8

To Capt. Weitzner.

Information requested: Dorsal and lumbar spine.

Clinical diagnosis: Old fracture of 10-11-12 dorsal vertebrae and lamenectomy.

(Signed) C. M. DeBECK,
1st Lt., M. C.

Labortory U. S. General Hospital No. 26, August 27, 1919.

X-ray findings:

The interspaces between the 9th-10th-11th and 12th dorsal and 1st-2nd and 3rd lumbar vertebrae are irregular in outline narrowed and hazy. The spinous processes of these vertebrae are absent. There is a fracture of the transverse process left side of the first lumbar vertebrae.

Plate

Number	size	part
9520R	10x12	spine
9521R	"	"

(Signed) C. F. WEITZNER,
Capt. M. C.

Plaintiff's Exhibit No. 4—(Continued)

Mahoney Will V.

Pvt. 3rd A. S. 2239 20 L

Clinical Record

Radiographic Report

Station Ft. Sheridan, Ill.

Date Feb. 9 1920.

From Ward 37

To X-Ray Laboratory U. S. A. General Hospital No. 28.

Information requested: 1st and 2d lumbar vert.

Clinical diagnosis: old injury lumbar vertebra.

CAPT. CRACROFT.

Labortory U. S. A. General Hospital No. 28, February 13, 1920.

X-ray findings: Stereoscopic plates of the 1st lumbar reveal an evacuated area 3x3 cm. involving the central region of this vertebra. Its spinous process cannot be visualized and there appears to have been a laminectomy performed.

No distinct shadow of the transverse process, left side of this vertebra, can [150] be seen.

Scoliosis is observed involving the 10, 11, and 12 dorsal and the 1st and 2d lumbar, with convexity to the right.

Plate

Number Size

7103½ 2BP

(Signed) B. F. HOYT,

Captain, M. D.

Mahoney Wm.

Pvt. 3d S BN 2240 21 L

Plaintiff's Exhibit No. 4—(Continued)

Clinical Record

Radiographic Report

Station Ft. Sheridan, Ill.

Date Mar. 28 1920.

From Ward 33

To X-Ray Laboratory U. S. A. General Hospital No. 28.

Information requested: spine, lumbar and dorsal region.

Clinical diagnosis: injury spine.

MAJOR WINOMILLER.

Laboratory U. S. A. General Hospital No. 28, Mar 31, 1920.

X-ray findings: Scoliosis lumbo-dorsal with convexity to the right. A triangular evacuation of 1st lumbar vertebra 4 cm. at base.

Spinous process anot visualized.

Transverse process left side of this vertebra apparently missing.

A laminectomy has evidently been performed this side. No further evidence of pathology lumbar spine is observed.

Plate

Number Size

71031/2 6BP

(Signed) T. V. KILJNE,

1st Lt., M. C.

Mahoney Wm. 2241 22 L

Pvt 3d S BN [151]

Plaintiff's Exhibit No. 4—(Continued)

Clinical Record

Brief

U. S. Gen. Hosp. No. 26.

Register No. 7094 Ward 8.

Mahoney, Will V.

Pvt. 3rd A. S.

23 W 2-1/12.

Birthplace S. Dak.

Station Fort Des Moines, Ia.

Date of admission Aug. 22, 1919. 4:00 P.M.

Source of admission By trans from U. S. Gen. Hosp. No. 27., Fort Douglas, Utah. S. O. #188.

Religion Catholic.

Home address 1251-3rd. So.Str., Minot, N. Dak.

Name and address of nearest relative mother, Mrs. Thomas Mahoney same address.

Initials of admitting officer H.L.P.

Disposition Trans. Ft. Sheridan, Ill.

Date Oct .13-19.

Final diagnosis Acct. fracture 10th 11th & 12th dorsal vertebra incurred Nov. 11, 1918 at Langres France caused by 3 sacks of potatoes falling on head & shoulders.

L. O. D. yes.

Condition on completion of case Walks fairly well in brace, no pain now.

(Signed) G. W. DAY,

1st Lt. M. C. 2257 1 i

Plaintiff's Exhibit No. 4—(Continued)

Clinical Record

Brief

U. S. Gen. Hosp. No. 28.

Register No. 42796 Ward 38.

Mahoney Will V.

Pvt. 3rd AS.

23 W 2 1/12.

Birthplace S. D.

Station Over Seas.

Date of admission Oct 14, 1919. [160]

Source of admission Trans fr USGH 26 SO 277 pp 1 Oct 13 1919.

Religion Cath.

Home address 123 3rd St St Minot N. D.

Name and address of nearest relative Mother, Mrs. Thomas.....same.

Initials of admitting officer H.T.G.

Disposition On 30 da furlough Par 106 AR.

Date Oct 30 1919.

Final diagnosis old frac 10, 11 & 12 dorsal vertebrae from bags of potatoes falling on him Langres, Fr. Nov. 11, 1918 while handling them in warehouse.

L. O. D. yes.

Condition on completion of case incomplete.

(Signed) Capt. T. B. CRACROFT.

2254 1 j

Fracture 10-11-12 Dorsal vertebrae

—ld 2255 2 j

Plaintiff's Exhibit No. 4—(Continued)

Clinical Record

Brief

42796

USA Gen. Hosp. #28.

Register No. 46306 Ward 37.

Mahoney William

Pvt 3rd A.S.

23 W 29/12.

Birthplace So. Do.

Station Over Seas.

Date of admission 1/10/20.

Source of admission Furlough.

Religion Cath.

Home address 412 Fifth Ave So East Miner So. Do.

Name and address of nearest relative mother, same add.

Initials of admitting officer D.E.E.

Disposition On 15 da furlough AR 106.

Date Jan 17/1920.

Final diagnosis Frac 10th, 11th, & 12th dorsal vertebrae incurred Nov. 11, 1918 at Langres, France causer by 3 sacks of potatoes falling down on his head and shoulders.

L. O. D. yes.

Condition on completion of case incomplete.

(Signed) CAPT. T. B. CRACROFT.

2252 1 k

[161]

Plaintiff's Exhibit No. 4—(Continued)

REPORT OF DISABILITY BOARD

Held at Base Hospital 90 under G. O. No. 41, G. H. Q. A. E. F., March 14, 1918.

Mar. 26, 1919.

Mahoney William 241760.

Pvt. 3rd Ser. Bat.

1. Nature of disability: Fracture dislocation 11 dorsal ver.

2. Disability did not exist prior to entry into service.

3. Disability is in line of duty.

4. Classification D.

5. Nature of duty recommended:

H. F. CONNELLY,
Major, Medical Corps Pres. Board.

J. D. PILCHER,
Major, Medical Corps.

A. SKVERSKY,
Medical Corps, 1st Lieut.

2304 1 m

U. S. Army General Hospital #27,
Fort Douglas, Utah.
July 8, 1919.

From: Chief of Surgical Service, Ft. Douglas, Utah.

To: Commanding Officer, Ft. Douglas, Utah.

Subject: Recommendation for transfer of Private Will V Mahoney #241760, Co. 3 Army School.

1. Simple fracture 10, 11 and 12 dorsal verte-

Plaintiff's Exhibit No. 4—(Continued)

brae. On November 11th, 1919 at Langers, France a load of potatoes fell on the patient causing a fracture of the above named vertebrae. He was operated upon (Laminectomy) . There is no injury to the spinal cord. Patient has been in a plaster cast most of the time since recovery from operation —at present is wearing a steel back brace. The injury is healed but the back muscles are weak.

2. Patient is progressing favorably and able to walk with assistance when wearing the brace.

3. Patient will need attendant while traveling.

4. Home address—Minot, N. D.

5. Enlisted at Minot, N. D.

6. Recommend that this patient be transferred [162] to a suitable hospital for future observation and treatment.

(Signed) W. E. RANZ,
Major, M.C.U.S.A.

201 (Mahoney, Will V.) 1st Ind. EAL/eml

U. S. Army General Hospital No. 27, Fort Douglas, Utah, July 9, 1919.

To:—Surgeon General, U. S. Army, Washington, D. C.

1. Forwarded, recommending the transfer of this soldier to a suitable hospital.

(Signed) A. D. PARCE,
Lieut. Col., M. C., U. S. A.,
Commanding.

1 Incl.

Mr. Meindl: The plaintiff offers into evidence Pre-Trial Exhibit No. 1, report of veteran's examination.

The Court: Admitted. [164]

(Medical reports, Defendant's Pre-Trial Exhibit No. 1, introduced in evidence by the plaintiff, are in words and figures as follows, to-wit:)

DEFENDANT'S PRE-TRIAL EXHIBIT No. 1

HOSPITALIZATION OF CLAIMANT

2/5/42

From: Budget Officer and Chief of Statistics

To: Department of Justice

Name of Claimant Mahoney, William V. C-No. 430 162

Rank and Org. Pvt. Co. 3 S Bat. Army School

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Hospital	Admitted Hosp.	Discharged	Diagnosis	Authority
V.A. Facility American Lake, Wash.	4/ 5/34	6/10/34 A.W.O.L.	Epilepsy, petit mal Arthritis, ch., traumatic dorsal and lumbar spine Fracture, lumbar vertebrae, 1st, 5th & 12th dorsal, healed, with fusion and ankylosis. Flat feet, bilaterel, second degree Cicatrix over spine, PO, non-symptomatic	VAF, American Lake, Wash.
V.A. Facility American Lake Wash.	10/11/35	1/17/36 A.W.O.P.	Psychosis, epileptic, deterioration Conjunctivitis, chronic Hyperopia, mild Deviation, nasal septum Weak feet, second degree, none-symptomatic Hallux valgus, right great toe Cicatrices, non-symptomatic Absence, of teeth (7) acquired.	VAF, Am. Lake, Wash.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Hospital	Admitted Hosp.	Discharged	Diagnosis	Authority
V.A. Facility Am. Lake, Wash.	2/29/36	5/11/36 A.W.O.P.	Psychosis, epileptic deterioration Conjunctivitis, chronic Hyperopia, mild Deviation, nasal septum Weak feet, 2nd degree, non-service Hallux valgus, rt. gr. toe Cicatrices, non-symptomatic Absence of teeth, acquired	VAF, Am. Lake Wash.
V.A. Facility Portland, Oreg.	10/29/37	11/ 5/37 Treatment Comp.	Wounds, recent, lacerated & contused, occipitoperietal region of scalp, left [165] Psychosis, epileptic deterioration Arthritis, chr. traum. dorsal & lumbar spine Scars, healed, P.O. lower dorsal & upper lumbar regions Fracture, old, healed, 12th dorsal & 1st & 5th lumbar vertebrae, w/ deformity & loss of bone structures Ankylosis of 12th dorsal & 1st lumbar Repair of lacerations, scalp	VAF, P-10 Portland Oreg.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Hospital	Admitted Hosp.	Discharged	Diagnosis	Authority
			Seoliosis & Kyphosis, lumbo-dorsal. Limitation of motion, lumbo-dorsal spine Sears, traum. mult., head & Neck, old, healed Conjunctivitis, ch. Deviated nasal septum Missing teeth Hallux valugus, bilat., more marked Pes planus, 2nd degree, bilat. Hemorrhoids, external	
V.A. Facility Roseburg, Oreg.	1/19/38	Trial visit 4/ 2/38	Psychosis, epileptic deterioration Arthritis, ch. traumatic, dorsal and lumbar spine	VAF, Roseburg, Oregon
	Ret'd 7/ 2/38	Trial visit 6/ 9/39	Fracture, Lumbar vertebrae 1, 5, 12, dorsal, healed with fusion and ankylosis	
	Ret'd 7/21/39	Discharged 8/ 1/41	Cicatrix, P.O. spine	
		Expiration of Trial visit	Syphilis, tertiary Fracture, right mandible Phimosis, venereal	

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Hospital	Admitted Hosp.	Discharged	Diagnosis	Authority
			Missing teeth Gingivitis, far adv. Operation: Dorsal incison of prepuce 8/22/38	
V.A. Facility Portland, Oreg.	5/ 1/38	5/ 4/38 Emergency relieved, while on trial visit from Roseburg	Psychosis, epileptic deterioration Nephritis, parenchymatous, ch. Lacerations, scalp & upper lip Contusions, eyelids Arthritis, ch., traumatic, dorsal & lumbar spine Scars, healed, P.O., dorsal & lumbar regions Fracture, old, healed, 12th dorsal & 1st & 5th lumbar vertebrae, with deformity & loss of bone structures Ankylosis, 12th dorsal & [166] 1st lumbar spine Scoliosis & kyphosis, lumbar dorsal Hemorrhoids, external deviated nasal septum Missing teeth Hallus valgus, bilat.	P-10 Portland, Oreg.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Hospital	Admitted Hosp.	Discharged	Diagnosis	Authority
V.A. Facility Portland, Oreg.	7/17/39	7/20/39 Tr. to VAF, Roseburg, Entered Portland while on trial visit from Rose- burg, Oreg.	Phychosis, epileptic deterioration Nephritis, parenchymatous, chr., history Fracture of mandible Ecchymosis, L. lid Hemorrhage, subconjunctival L. Arthritis, chr., traumatic, old dorsal & lumbar spine Scars, healed, PO, dorsal & lumbar spine Fracture, old, healed, 12th dorsal & 1st & 5th lumbar vertebrae Ankylosis, 12th dorsal and 1st lumbar vertebrae Scoliosis & kyphosis, lumbo-dorsal spine Hemorrhoids, external Deviated nasal septum Hallux valgus Week feet Missing teeth	P-10 Portland Oreg.

S. M. MOORE, JR.,
By S. Andrus

Defendant's Pre-Trial Exhibit No. 1—(Continued)

REPORT OF PHYSICAL EXAMINATION

U. S. Public Health Service

C 430162

Place Minot, N. Dak. Date April 9, 1921

1. Claimant's name Mahoney William V.

2. Service, rank, and organization Pvt. Co 3 Service Batt. army school.

3. Present address 313 5th Ave. N. W. Minot, N. Dak. Ry Minot.

4. Age 25 5. Color White 6. Principal previous civil occupation Laborer.

7. Date of induction July 15, 1917 8. Date of discharge May 22, 1920.

9. Brief military history of claimant's disability: Flu B.H. Langres France May 1918 for 10 days. Fracture and dislocation of 10th, 11th and 12th Dorsal Vertebra while loading sacks of potatoes at Landres France Nov. 11, 1918. In C. H. 24 Langres France until Jan. 19, 1919. Laminectormy performed. In B.H. at Chaumont France until March 17, 1919. In Evac hospl at Savonaty France 3 weeks. Then back to New York to Grand Central Palace for a week. Then to G.H. at Fort Douglas from June 1st to Aug 23, 1919. Then to P.H. at Fort DesMoines till [167] Oct. 15, 1919. Then to U. S. Gen. hosp. May 22, 1920.

10. Back is still stiff. Unable to work.

11. 1st l. r. molar missing. Some teeth decayed. Varicose veings slight bilateral. Chest Neg. Scar 8½ inches long over spine in lower dorsal

Defendant's Pre-Trial Exhibit No. 1—(Continued)

and lumber region. Stiffness of spine. X Ray of spine shows slight displacement between 11th and 12th dorsal vertebrae and fracture of 12th dorsal 1st and 2nd lumbar vertebra.

Forwarded by Supervisor, District No. 10 U.S.P.H.S.

Vision (Snellen chart) (Uncorrected R 30/20,L 20/20.)
(Corrected by claimant's glasses R 20/20,L 20/20.)

Hearing (spoken voice) R 20/20.
L 20/20.

12. Diagnosis: Fracture of Vertebra Simple, 12th Dorsal 1st and 2nd Lumbar 1943. Dislocation of Vertebra (Twelfth) 1818.

13. Prognosis: Favorable.

14. Is claimant able to resume his former occupation? No Any occupation? Yes.

15. Is claimant bedridden? No 16. Is claimant able to travel? Yes.

17. Do you advise hospital care? No.

18. Will claimant accept hospital care? Yes.

19. Has claimant a vocational handicap? Yes.

20. Is his physical and mental condition such that vocational training is feasible? Yes.

21. Did you examine the man yourself on this date? Yes.

22. Any other remarks: This man's condition

Defendant's Pre-Trial Exhibit No. 1—(Continued)

is improving and with vocational training should be able to handle any clerical or similar work.

Name A. J. McCannel
Title A. A. Surg. U.S.P.H.S.
Address Minot, N. Dak.

Received Apr 13 1921

82-934-1A

REPORT OF PHYSICAL EXAMINATION

U. S. Public Health Service
C. No. 430162
D. No. 10-13836

1. Claimant's name Mahoney, William V.

2. Service, rank, and organization Private, 3rd Co. Service Bn. Army School.

3. Present address 313-5th Ave. NW. Minot, N. Dak.

4. Age 25 5. Color W 6. Principal pre-war civil occupation Laborer.

7. Date of induction Jul. 15, 1917.

8. Date of discharge May 22, 1920.

Diagnosis: Fracture of vertebra, simple, 12th dorsal 1st and 2nd lumbar. Dislocation of vertebra, 12th.

Is his physical and mental condition such that vocational training is feasible? Yes. (report torn and small pieces missing) [168]

Did you examine the man yourself on this date? No. Data taken from file.

Place Minneapolis, Minn. Date May 3, 1921.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Name H. E. Bank, M. D. Title Asst. D. M. O. F.B.V.E.

Follow-up report is not necessary.

Date May 5 1921

Henry L. Williams, D.M.O., Dist. No. 10

jjb

REPORT OF PHYSICAL EXAMINATION

U. S. Public Health Service

C No. 430162 S

Place Minot, N.Dak. Date August 18, 1921.

1. Claimant's name Mahoney William

2. Service, rand and organization Pvt. Co. 3 Service Batt. Army School.

3. Present address 313 5th Ave. N.W. Minot, N. Dak. Ry. Minot.

4. Age 25 5. Color White 6. Principal previous civil occupation Laborer.

7. Date of induction July 15, 1917.

8. Date of discharge May 22, 1920.

9. Brief military history of claimant's disability: Flu B.H. Langres France May 1918 for 10 days. Fracture and dislocation of 10th, 11th and 12th Dorsal Vertebrae while loading sacks of potatoes at Langres France Nov. 11, 1918. In C.H. Langres France until Jan. 19, 1919. Laminectomy performed. In B.H. at Chaumont France until March 17, 1919. In Evac Hospital at Savonaty France 3 weeks. Then back to New York to Grand Central Palace for a week. Then to G.H. at Fort Douglas from June 1st. to Aug. 23, 1919. Then to B.H. at Fort DesMoines till Oct. 15, 1919. Then

Defendant's Pre-Trial Exhibit No. 1—(Continued) to U.S. Gen. Hosp. at Fort Sheridan. Given S.C.D. from Army and discharged from Hosp. May 22, 1920.

10. Back is still stiff. Unable to do heavy work.

11. 1st. L.R. Molar missing. Some teeth decayed. X-ray of spine Apr. 9, 1921 showed slight displacement between 11th and 12th dorsal vertebra and fracture of 12th dorsal 1st and 2nd lumbar vertebrae. Varicose veins slight bilateral. Chest Chest Negative. Scar 8½ inches long over spine in lower dorsal and lumbar region. Stiffness of spine.

Vision (Snellen chart) (Uncorrected R30/20, L 20/20.)
(Corrected by claimant's glasses R 20/20, L 20/20.)

Hearing (spoken voice) R 20/20.
L 20/20.

12. Diagnosis: Needs Dental Work. Fracture of Vertebrae Simple, 12th Dorsal and 1st and 2nd. Lumber 1943. Dislocation of Vertebrze (Twelfth) 1818.

13. Prognosis: Favorable.

14. Is claimant able to resume his former occupation? No Any occupation? Yes.

15. Is claimant bedridden? No 16 Is claimant able to travel? Yes. [169]

17. Do you advise hospital care? No.

18. Will claimant accept hospital care? Yes.

19. Has claimant a vocational handicap? Yes.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

20. Is his physical and mental condition such that vocational training is feasible? Yes.

21. Did you examine the man yourself this date? Yes.

Name A. J. McCannel
Title A.A. Surg. USPHS.,
Address Minot, N. Dak. 82-93-1A

U. S. VETERANS' BUREAU

13th District

Place Seattle
Date 1-17-23

Dr. Joiner

Attending Specialist, U.S. Veterans' Bureau

Sir:

It is requested that you examine the bearer, Mr. Wm. V. Mahoney, C 430162 V.R. a beneficiary of the U. S. Veterans' Bureau, and report your findings and recommendations below.

By authority of the District Manager:

Diagnosis: Acute Rhinitis—Chronic catarrhal.

Recommendations: Chlontone inhalant gr. spray nose q. sl. Zu. S. E. A. (illegible)

Jan. 17, 1924 W. E. JOINER
Date examined Attending Specialist

415

REPORT OF PHYSICAL EXAMINATION

C.No. 430 162

1. Claimant's name Mahoney, William V. married.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

2. Service, rank, and organization Pvt. Co. 3 service Batt. Army School.

3. Present address 2301 E. Madison St. (Lowell Court) Seattle, Wash. [170]

4. Age 27 5. Color White 6. Principal prewar civil occupation Laborer.

7. Date of induction July 15, 1917.

8. Date of discharge May 22, 1920.

9. Brief history of claimant's disability during service: Oversea from Dec. 15, 1917, until May 15, 1919. Had "flu" May 1918 for 10 days Field Hosp. Langres France. Returned to duty. Fracture and dislocation of 10, 11th and 12th Dorsal vertebrae on Nov. 11, 1918. Hosp. #24 for 2 months. Laminectomy performed at #24. Transferred to B.H.#90. There until March 1919. Then to Savenney in hospital. There until May 1919. Then to U.S.A. to Grand Central palace for a week. Then to G.N. at Fort Douglas from June 1st to Aug. 23, 1919. Then to Fort Des Moines, Iowa until Oct. 15, 1919. Then to U.S. Gen.Hospital at Fort Sheridan. There until discharged S.C.D. May 22, 1920. Post-service—No serious illness. No operations. Has had weakness in back. Industrial history—Entered vocational training Jan. 9, 1922. Training interrupted Jan. 15, 1924. Family History. Mother living and well. Father died—cause unknown. 2 brother living and well. 1 sister living and well. 2 sisters dead cause unknown.

10. Present complaint: Stiffness and weakness

Defendant's Pre-Trial Exhibit No. 1—(Continued) in dorsal spine. I am unable to do any lifting or hard work.

11. Physical examination: Fairly well nourished male adult. Color good. Weight without coat 134. Height in shoes 70½". Temperature 97.8 Pulse 76. Skull and Scalp: normal in shape, size and appearance. Eyes, Ears, Nose and Throat apparently normal. Teeth: referred to dental section as follows: "1 missing tooth (0023), 2 dental caries (0229), Gingivitis (0630) X-rays were taken of teeth. Recommendations: Dental treatment." Neck: No palpable lymphatics. Thyroid is normal. Thorax: Chest: shape, long, narrow and flat. Mobility poor but equal. Palpation apparently normal. Percussion and auscultation apparently normal. No rales. Heart: normal in tones, rate and boundaries. Blood pressure 125/80. No murmurs, no thrills. Abdomen and Viscera: Wlls intact. No masses, tenderness, rigidity, no hernia. Pelvis and Perineum: No deformity. No hemorrhoids. Genitalia: apparently normal. Venereal: Denies G.C., Lues and chancroid. Extremities, Bones, Joints and Skin: A scar on the back extending from 10th dorsal spine along the right spinal border to the upper margin of the sacrum 8¼" long, due to operation following fracture of spine. There is a kyphosis involving 10th, 11th and 12th dorsal vertebrae and the 1st and 2nd lumbar vertebrae. Also a slight right scoliosis in this same region. There is no motion in this part of the spine in any direction. There is tenderness to percussion over this region. The muscle

Defendant's Pre-Trial Exhibit No. 1—(Continued)
over the lumbo dorsal region are atonic and atrophic. There is drooping of the right shoulder. X-ray lower dorsal and lumbar spine referred to Dr. Hopkins, Spec. Orth.&Surg. who reports:

"This film shows an old injury to the twelfth dorsal and the first, second and third lumbar vertebrae. The articular surface between the twelfth dorsal and the first lumbar is somewhat irregular and indistinct. The intervertebral space is narrowed and there is some lipping of the right upper border of the first lumbar on the left side and absorption on the right upper angle. The first and second lumbar vertebrae are practically fused, the intervertebral space being obliterated. The spines of these two vertebrae are absent along with part of the laminae. The second and third lumbar vertebrae are also fused, the intervertebral space bind practically obliterated. There is a left lateral curvature in the upper lumbar region with right curvature of the mid-dorsal region. Conclusions: Fracture of spine and bony ankylosis. The right foot presents a marked hallux valgus with [171] callosity over the distal head of the 1st metatarsal also a thick sensitive callous at the base of 5th toe right foot. There is 1st degree flat foot bilateral. Otherwise negative. Nervous System: apparently normal. Urinalysis: straw, clear, acid, sp.gr.1010, albumen and sugar negative. Wasserman reaction negative.

12. Diagnosis: 1. 3082 Fracture of spine. 2. 0106 Ankylosis bony of spine. 3. 0161 atony

Defendant's Pre-Trial Exhibit No. 1—(Continued)

muscles of back. 4. 0169 Atrophy muscles of back. 5. 0344 Curvature of spine (kyphsis). 6. 0346 Curvature of spine (scolosis). 7. 0662 Hallux valgus bilateral. 8. 0587 Flat foot bilateral 1st°. 9. 0209 Callosities. 13. Prognosis: Guarded for all.

14. Is claimant able to resume his prewar occupation? No, account of spine.

15. Is claimant bedridden? No. 16. Is claimant able to travel? Yes.

17. Do you advise hospital care? No. 18. Will claimant accept hospital care? Not offered 19. Is an attendant necessary? No 20. Is his physical and mental condition such that vocational training is feasible? Yes 21. Did you examine the man yourself on this date? Yes 22. Place Seattle, Wash. Date Jan. 18, 1924. Name See below. Title See below.

Any additional remarks: It is the opinion of this board that this claimant's disabilities of the spine and feet are permanent.

/s/ G. I. BIRCHFIELD
G. I. BIRCHFIELD,
Chairman

/s/ R. T. HOPKINS
R. T. HOPKINS,
Spec. In Orth.

/s/ A. C. FEAMAN
A. C. FEAMAN,
Recorder.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

U. S. VETERANS' BUUREAU #6873

13th District 2-14-17

Place Seattle, Wash.

Date Jan 18 1924

Sir:

You are requested to make X-ray Examination as indicated below:

Name Mahoney William V.

Address Seattle, Wash.

Compensation 430162

Parts requested Lower dorsal and lumbar spine

By authority of District Manager:

Board # A. C. FEAMAN

Date 1/18/24

Parts taken Lower Dorsal and Lumbar Spine.

No. and size of plates 2-14x17.

Record of findings :; 1/22/24

This film shows an old injury to the twlfth dorsal and the first, second and third lumbar vertebrae. The articular suface between the twelfth dorsal and the first lumbar is somewhat irregular and indistinct. The intervertebral space is narrowed [172] and there is some lipping of the right upper border of the first lumbar on the left side and absorption on the right upper angle. The first and second lumbar vertebrae are practically fused, the intervertebral space being obliterated. The Spines of these two vertebrae are absent along with part of the laminae. The second and third lumbar vertebrae are also fused, the intervertebral space bind

Defendant's Pre-Trial Exhibit No. 1—(Continued)
practically obliterated. There is a left lateral curvature in the upper lumbar region with right curvature of the mid-dorsal region.

Conclusions: Fracture of spine and bony ankylosis.

/s/ R. T. HOPKINS

RTH:raj. R. T. HOPKINS, M.D.,
Specialist, Orthopedics and
Surgery.

REPORT OF PHYSICAL EXAMINATION

Authority: Form 107D April 28, 1924.
C.No. 430 162

1. Claimant's name Mahoney William V. married.

2. Service, rank, and organization Pvt.Co. 3 Service Batt. Army School.

3. Present address 2301 E. Madison St. Seattle, Wash.

4. Age 28 5. Color White 6. Principal prewar civil occupation Laborer.

7. Date of induction July 15, 1917.

8. Date of discharge May 22, 1920.

9. Brief history of claimant's disability during service: Overseas from Dec. 15, 1917 until May 15, 1919. Had "Flu" May 1918 for 10 days Field Hosp. Langres, France. Returned to duty. Fracture and dislocation of 10, 11th and 12th dorsal vertebrae on Nov. 11, 1918. Hosp. #24 for 2 months. Laminectomy performed at #24. Transferred to B.H.

Defendant's Pre-Trial Exhibit No. 1—(Continued) #90—there until March 1919. Then to Savennay in Hospital. There until May 1919. Then to U.S.A. to Grand Central Palace for a week. Then to B.N. at Fort Douglas from June 1st to Aug. 23, 1919. Then to Fort Des Moines, Iowa until Oct. 15, 1919. Then to U.S.Gen. Hosp. at Ft. Sheridan. There until discharged S.C.D. May 22, 1920. Post service: No serious illness. No operations. Has had weakness in back. Industrial History: Entered Vocational training Jan. 9, 1922. Training interrupted Jan. 15, 1924. Family History: Mother living and well. Father dead, cause unknown. 2 brothers living and well. 1 sister living and well. 2 sisters dead, cause unknown. Industrial: Prin. prewar occupation: Laborer at $20. week. Post war: Unemployed May 1920 to Jan 1, 1922. Vocational training, Seattle, Jan. 9, 1922 to Apr. 28, 1924—still training. Claimant considers wages lower due to sickness.

10. Present complaint: Stiffness and weakness in small of my back if I sit long at a time or walk very far. I am unable to do any lifting or hard work.

11. Physical examination: Fairly well nourished. Height in shoes 70½". Weight without coat 135. Temp. 97.8. Pulse 72. Head: Skull and scalp negative. [173] Eyes: Referred to Dr. Joiner, Chief, E.E.N.T.Section who reports: "V.R. 20/30 plus .75 sph with plus 1.00 c x .15— 20/15. L. 20/20—3 plus .75 sph with plus .75 c x 1.80— 20/15. Conjunctiva, cornea, media, fundi and optic nerves negative. Diagnosis: Compound hyperopic Astigmatism.

Defendant's Pre-Trial Exhibit No. 1—(Continued) Recommendations: None." Ears, nose and throat—negative. Teeth: Report of Jan. 18, 1924 as follows: "1 missing tooth (0023) 2 Dental Caries (0229) Gingivitis (0730) X-Rays were taken of teeth. Recommendations: Dental Treatment." Has had no dental work done since. Neck: No palpable lymph glands. Thyroid negative. Chest: Long, narrow and flat. Mobility good and equal. Lungs: Apparently normal on palpation, percussion and auscultation. No rales. Heart: Apparently normal, in tone, rate and boundary. No thrill. Abdomen: Negative to inspection, no masses, tenderness or rigidity. No hernia. Pelvis and Perineum: Negative. No hemorrhoids. Genitalia: Negative. Extremities and Joints: Scar on back extending from the 10th dorsal spine along the right spinal border to the upper margin of the sacrum 8¼" long, due to operation following fracture of spine, presents a kyphosis with its apex at 11 x 12 dorsal vertebrae. There is a complete rigidity of the spine involving the lower dorsals and the lumbar spine, there is an atrophy and atony of the back muscle, erector spinae group. Movements of spine as follows: From 0 erect position, forward bending 30 degrees, backward beinding 10 degrees—laberal bending right and left 10 degrees. There is complaint of weakness and pain in both loins which is well substanciated by the condition of musculature of the back. There is a very slight scoliosis in the region of 10, 11 and 12 dorsal vertebrae. Referred to Dr. Baumgarten, A.S.Roentg. for X-Ray of dor-

Defendant's Pre-Trial Exhibit No. 1—(Continued)
sal and lumbar spine, who reports: "Dorsal and lumbar spine: In the lateral view there is shown a moderate kyphosis with the maximum angle at the first lumbar. The bodies of the first and second lumbars especially the former, are deformed; the first is wedge shaped. In the anteroposterior view the dorsal curvature of the spine toward the right is accentuated and there is a sharp curvature of moderate degree toward the left. From these films it appears that the spinus processes and laminae have been removed of 1st lumbar. On the posterosuperior and left side of the body of the first there is a bony projection extending upward for a distance of one-half inch. This is three sixteenths of an inch in width. There does not appear to be any activity in this region at the present time." The right foot presents a marked hallux valgus with callosity over the distal head of 1st metatarsal. Also a thick callous at the base of the 5th tow. There is flat foot bilateral 1st. degree. Nervous System: Negative. Skin: Negative. Urinalysis: (4-28-24) Amber, clear, acid, sp. gr. 1.026. Albumen trace. Sugar negative. Casts—few hyaline. Pus cells few. Epithelia few. Red cells none. Mucous shreds. Cylindroids few. Crystals—uric acid. Urinalysis: (5-3-24) Volume in 24 hours 1½ quarts. Straw, clear, acid, sp. gr. 1.012. Albumen trace. Sugar negative. Casts—rare hyaline. Pus cells occasional. Epithelia few. Red cells occasional. Mucous shreds. Cylindroids—few.

12. Diagnosis:

Defendant's Pre-Trial Exhibit No. 1—(Continued)

(1) 3082 Fracture of spine.
(2) 0106 Ankylosis bony of spine.
(3) 0161 Atony muscles of back.
(4) 0169 Atrophy muscles of back.
(5) 0344 Curvature of spine (Kyphosis).
(6) 0346 Curvature of spine (Scoliosis).
(7) 0662 Hallux valgus.
(8) 0587 Flat feet bilateral 1st degree.
(9) 0209 Callosities.
(10) 0023 Missing teeth, one.
(11) 0229 Dental Caries, two.
(12) 0630 Gingivitis.
(13) 0156 Astigmatism, compound, hyperopic.
(14) 0061 Albuminuria. [174]

13. Prognosis: Guarded.

14. Is claimant able to resume his prewar occupation, in your opinion? No.

15. Is claimant bedridden? No. 16. Is claimant able to travel? Yes. 17. Do you advise hospital care? No. 18. Will claimant accept hospital care? Not offered. 19. Is an attendant necessary? No. 20. Is his physical and mental condition such that vocational training is feasible? Yes. 21. Did you examine the man yourself on this date? Yes.

22. Place Seattle, Washington. Date April 28, 1924.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Name /s/ D. A. SEIBERT, M. D.

Title Medical Examiner.

Report of Physical Examination
Claims and Rating Board #2
C. No. 430 162

1. Claimant's name Mahoney William V Address 475 Clay St. Portland, Ore.

2. Examined Seattle, Wn. Feb. 11, 1925. 3. Age 28. 4. Color white.

6. Rank and organization Pvt Co. 3 Serv. Bat. Army School.

7. Date of induction July 15, 1917 of discharge from service May 22, 1920 married Prin pre-war occupation: Laborer.

8. Brief outline of claimant's disability since service: Overseas from Dec. 15, 1917 until May 15, 1919. Had Flu May 1918 for 10 days Field Hosp. Langres, France. Returned to duty. Fracture and dislocation of 10, 11th and 12th dorsal vertebrae on Nov. 11, 1918. Hosp #24 for 2 months. Laminectomy performed at #24. Trans. to B.H. #90—there until Mar. 1919. Then to Savennay in Hosp. There until May 1919. Then to U.S.A. to Grand Central Palace for a wk. Then to B.N. at Ft. Douglas from June 1st to Aug. 23, 1919. Then to Ft. Des Moines, Iowa, until Oct. 15, 1919. Then to U.S. Gen. Hosp. at Ft. Sheridan. There until discharge S.C.D. May 22, 1920. Post Service; no serious illness. No operation. Has had weakness in back. Stiffness and weakness

Defendant's Pre-Trial Exhibit No. 1—(Continued) of back and pains in loins when I sit for any length of time.

10. Physical examination: Fairly well nourished and developed. Height 70½. Weight 135. Pulse 76. Temp. 98. Head and Scalp apparently normal. Eyes and Ears referred for special examination "VR 20/30 -2 plus 75 sph with plus 100c x 15 equals 20/20. L 20/20 plus 75 sph with plus 75c x 180 equals 20/20. Conjunctiva, Cornea, Media, Fundi and Optic Nerve negative. HR w 40/40 cl 20/20 wh 15/15 V 20/20 Ears negative L w 40/40 cl 20/20 wh 15/15 V 20/20 Diagnosis; Coupound Hyperopic Astigmatism.

Nose, Throat, Neck and Thyroid normal. Thoras —broad and deep. Lungs—negative to percussion, auscultation, palpation, inspection. Heart, normal in outline PMI 5 interspace within nipple line, no murmurs, no thrills, rhythm regular. Abdomen, negative to inspection, no palpable masses, no tenderness, no rigidity no free fluid in abdominal cavity, [175] no distention. No G.I. complaint. Inguinal Rings and Genitalia., Rings normal, no hernia, no varicocele, no atrophy of testicles, no enlargement of cords. No hemorrhoids. Extremities, bones and joints, No limitation of motion of joints. No enlargemenet or redness of joints, no crepitation. Scar on back 8½" long beginning just to right of 10 dorsal vertebrae and extending downward P. O. for operation following fracture of spine, well healed. There is a marked rigidity of muscles of spine with atrophy. Rigidity of spine

Defendant's Pre-Trial Exhibit No. 1—(Continued) involving lower dorsal and lumbar, movements of spine limited forward bending 200 deg. Backward 170 deg. Lateral bending about 10 deg. either way. Complaint of pain in loins due to condition of musculature of back. There is a slight scoliosis to rt. in lower dorsal region, and a kyphosis in lower dorsal and upper lumbar—see x-ray-below. Flat fee bilateral 1st degree Hallux Valgus rt. Callosity right foot. X-ray of lower dorsal and lumbar spine, by R. C. Baumgarten, A.S. Roent.

"The ninth, tenth and eleventh dorsal appear normal with the exception of the interspaces which are narrowed and the articulating surfaces show slight irregularity as noted in the A.P. view. The twelfth dorsal and first lumbar show what appears to be an absence of the spinous processes and lamina. There is bony ankylosis existing between the twelfth dorsal and the first lumbar. There is slight angulation to the left with the apex at the first lumbar. The second, third, fourth and fifth lumbar appear fairly normal. No laberal view taken."

Nervous System, normal. Urinalysis: yellow, clear, acid, sp.gr. 1020. Albumen and sugar negative. Teeth referred to Dental Section; 1 missing tooth, 1 carie. Recommendations; Dental treatment."

General diagnosis:

0156 Compound Hyperopic Astigmatism. 0023 missing tooth—1

0229 carie 1. 3082 Fracture of spine.

0106 Ankylosis bony of spine. 0161 Atrophy muscle of back.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

0344 Curvature of spine—Kyphosis.
0344 Curvature of spine—Scoliosis.
0662 Hallux Valgus—rt. 0587 Flat Feet bilateral 1st deg.
0209 Callosities rt. foot.

Prognosis: Permanent.

Is claimatn bedridden? No.

Is claimant able to travel? yes Do you advise hospitalization? No Will claimant accept hospital care? not offered.

Is an attendant necessary for travel? No.

Did you examine the claimant yourself? Yes.

Address of Examiner Seattle, Washington.

/s/ W. E. JOINER
EENT Spec.
/s/ O. EDWARDS
Member
/s/ D. E. SEIBERT
Med. Exam.

Recommendations: Dental treatment. [176]

Report of Physical Examination #98
Claims and Rating Board #2
C-No. 430,162

1. Claimant's name Mahoney, William V. Address 334 5th St. So., Portland, Oregon.

2. Examined Seattle 4/16/26 4/16/26

3. Age 30 4. Color wh.

6. Rank and organization Pvt. Co. 3 Serv. Batt. Army Sch.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

7. Date of induction 7-13—17 of discharge from service 5-22-20 married.

8. Brief outline of claimant's disability since service: same.

9. Present complaint: Pains thru back & hips when I sit down and get up—am all stiff.

10. Physical examination: Temperature 98, pulse 78, time of day A.M. height 70½ inches; weight 132; Did you weight the claimant? Yes.

Vision: Hearing: All appear normal.

Fairly well nourished & developed. Skull and scalp An.

Eyes and nose referred. Ears & throat An. Neck & thyroid An.

Thoras long broad & flat. Heart and lungs An. Abdomen An. No G. I. complaint. My dz A & rechim An. Nervous system An for reflexes. No romberg. Bones & joints & extrem. All An. except back & feet referred.

General Diagnosis:

1. Astigmatism Comp. hyperopic.
2. Deviated septum of nose.
3. Cicatrix back P.O.
5. Curvature of spine (Kyphosis & Scoliosis).
6. Hallux Valgus bilateral.
7. Flat foot bilateral.
8. Fracture of spine.
9. Ankylosis spine.
10. Callosities rt. foot.

Prognosis: Unfavorable for improvement.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Is claimant bedridden: No Is claimant able to travel? yes.

Do you advise hospitalization? No Did you examine the claimant yourself? Yes.

Name of Examiner A. D. Sampson Title M.E.

Address of Examiner Seattle, Wn. [177]

U. S. Veterans' Bureau
Date 4-16-25
Name Mahoney, Wm. V.
C# 430162 Class MH

Dr. Joiner
Specialist,

Please examine the above named ex-service man and report your findings and recommendations below. The following is noted for your information:

eyes & nose

By authority of the Regional Manager, AG

Findings:

R 20/20 plus .78 sph with plus 1.00 cx 15 equal 20/20.

L 20/20 plus .75 sph with plus. 75 cx 180 equals 20/20.

Conj. cornea, med. fundi op. nerves neg.

Nose septum deviated to left not obstructive.

Spur septum right.

Diagnosis:

1. Comp. Hyp. astigmatism.
2. Deviated septum.
3. Spur septum.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Recommendations: None.

W. E. JOINER
Specialist, U.S.V.B.

April 16, 1926 Date of Examination.

Mahoney, Wm. V. C. 430162

13. Prognosis: Unfav. for improvement.
14. Able to res. pre-war occ.? no.
15. Bed ridden? no.
16. Able to travel? yes.
17. Advise hospital care? no.
18. Will he accept hosp.?
19. Attendant necessary? no.
20. Feasible? yes.

% Disability: 60%.

Handicap: Yes Code A.

D. A. SEIBERT
U. S. Veterans' Bureau
Seattle, Washington
Date 4-16-26
Name Mahoney, Wm. V.
C# 430162

Dr. Seibert
Specialist, U. S. Veterans' Bureau

Please examine the above named ex-service man and report your findings and recommendations below.

The following is noted for your information: Back & feet.

By authority of Regional Manager.
AG[178]

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Findings: Scar 8½" beginning to Rt. of 10th dorsal vertebrae and extending downward. P.O. for fracture of spine, scar is well healed. There is rigidity of muscles of back with atrophy also rigidity of spine in lower dorsal and lumbar.

Movements as follows: Forward to 165, backward to 170, Lateral movement about 10 degrees to rt. & left. There is a marked Kyphosis from 10th dorsal to lower lumbar and a slight scolosis in lower dorsal. Referred to x-ray 2/11/25.

Both feet are flat 1 degree, no symptoms. Bunions on both feet. The Rt one is somewhat tender. Left no complaint.

Small callous under head of 5th metacarpel Rt.

0285 Cicatrix back, P.O.

0169 Atrophy muscles of back.

0344 Curvature of spine (Kyphosis & Scolosis.

0662 Hallux Valgus bilateral.

0587 F. F. one degree bilateral.

3082 Fracture, spine.

0106 Ankylosis spine.

0209 Callosities Rt. foot.

0139 Arthritis chr. dorsal & lumbar spine quiescent.

D. A. SEIBERT
Specialist, U.S.V.B.

Apr. 16 - 26 Date of examination.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

U. S. Veterans' Bureau

Regional Office, Seattle, Washington.

Date 4-17-26

Sir:

You are requested to make X-ray examination as instructed below:

Name Mahoney, Wm. V. Address Portland, Ore.

Compensation 430162 Parts Requested Complete dorsal and lumbar spine A.P. & lateral — Symptomatically fixed.

By authority Regional Manager

D.A.S.

Date 4-19-26 Parts taken Dorsal Spine.

No. and size of plates #11372

Record of Findings:

Dorsal Spine: shows a double, mild grade scoliosis; the curve to the left in the upper dorsal and to the right in the lower. In the A.P. view the shadows of the bodies are overlapped and the interspaces are narrowed; in the lateral view the interspaces, especially the mid-dorsal, are narrowed.

Lumbar Spine: The 12th dorsal and 1st lumbar show an absence of the lamina on the right side and lamina and pedicles on the left side.

From the appearance of these films there has been a partial destruction of the disc surfaces between the 12th and first and first and second; there is some new bone production in these same regions. The 4th lumbar shows a division of the spinus [179] process. Sacro-iliacs are negative.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Conclusion: There is chronic infilammatory condition involving the entire dorsal and lumbar spine, in addition to the deformity (post-operative), involving the 12th dorsal and 1st lumbar.

R. C. BAUMGARTEN
X-ray Consultant.
Attending Specialist—Roentgenology.

REPORT OF PHYSICAL EXAMINATION

Compensation

11-1-32 C-No. 430 162

1. Claimant's name Mahoney, William V. Address 621 - 6th St., Portland, Oregon.

2. Examined U.S.V.H., Portland, Ore., 10-24-32.

3. Age 36 Color wh. Birthplace So. Dak. Race wh Color of eyes blue Color of hair brown.

4. Hieght — inches.

5. Permanent marks and scars other than described below: None.

6. Rank and organization Pvt. Co. 3, Serv. Bat. Army School. Date of induction 7-5-17 of discharge 5-22-20.

7. Origin and date of incurrence of disability as alleged by claimant:

Fracture of spine and residuals occurred in service. Convulsions, 5 or 6 in past year. Unconscious at these times. No other complaints.

8. Brief medical and industrial history:

No treatment of any kind.

9. Present complaint:

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Pain and soreness in spine at times. Occasional convulsions with loss of consciousness and followed by vomiting.

10. Temperature 98 Respiratory rate: Standing 18, sitting 17; immediately after exercise 23; 3 minutes after exercise 18; Pulse rate: Standing 72, sitting 72; immediately after exercise 125; 3 minutes after exercise 72.

Any arrhythmia of pulse? no Blood pressure: Systolic 150, diastolic 90.

11. General appearance Good; nutrituon good; muscular development fair; carriage erect; posture good; gait good.

12. Eyes: Normal.

13. Ears. Auditory canals: Normal: yes Discharge? no. Ordinary conversation heard: Right 20 plus feet; left 20 plus feet.

14. Nose, throat, sinuses: Normal: Yes.

15. Cardio-vascular system: Normal? Yes Except;— [180] He has a mod. deg. of Hypertension, cause undetermined.

16. Respiratory system: Normal? Yes.

17. Digestive system: Are mouth, teeth, gums, stomach, intestines, lives, gall bladder, and rectum normal? Yes.

18. Spleen; lymphatic glands: Normal? Yes.

19. Nervous system: Are brain spinal cord, peripheral nerves, and mentality normal?

See Special NP Report Attached.

20. Genito-urinary system: Kidneys, bladder, prostate, penis, testicles, normal? Yes.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

21. Rheumatism: Articular or muscular? Articular. What joints affected? Spine. Swelling, crepitus, atrophy deformity, limitation of motion, ankylosis? A residual of injury to spine resulting in fracture; spine is painful to percussion.

22. Hernia: Inguinal, femoral, ventral, umbilical? No.

23. Hyrocele? No Varicocele? No.

24. Varicose veins? No.

25. Pes planus (flat or weak foot)? No Pes cavus (hollow foot)? No High arch? No Hallux valgus (bunion)? No

26. Skin: No.

27. Residuals of gunshot wounds or other injuries: Sustained a fracture of dorsal and lumbar spine in service and had an operation to repair fracture. Spine is rigid with a moderate backward curvature of dorsal and upper lumbar. Neck movement limited. An x-ray ordered. A curvew PO scar back.

28. Evidence of effects of past or present vicious habits: None.

29. Laboratory examinations?

Wass & Kahn: Negative.

Comp. Fix. Test GC.: Positive.

Urinalysis: Reaction, neutral; Fp.gr. ——; no alb nor sugar; rare hy. casts.

Neuropsychiatric Examination

Mahoney, William V.

C-430,162

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Portland, Oregon, October 24, 1932

Statement: "Hospitalized for flu during service, and for injury when a pile of potato sacks fell on me, that was the day the Armistice was signed, and I was in the hospital until the next spring, then sent home on the hospital ship Mercy, and sent to hospital in N. Y. for about two weeks, from there sent to Ft. Douglas, Salt Lake City, and there until August or September, from there sent to Des Moines, and from Des Moines to Ft. Sheridan where I remained until discharged from army, S.C.D. [181] May 22, 1920. No hospitalization since discharge but in the last year I have had four or five spells, of some kind, the first one about a year ago, I was walking along the street, my ears started to ring, and I had some sort of a convulsion. I woke up in St. Vincent's hospital, remained there about 24 hours, was confused when I first came to and couldn't even tell them my name or where I lived. The next spell didn't last quite so long, I was on the street that time too. I felt like if I could get away from everybody and be alone I could fight it off, but I tried that the next time and it didn't work. I had one spell in the house, I live with my brother-in-law, and not long ago I had another one outside, I don't know how it happened but I hurt muself behind left ear, I was walking down 11th street the last I remember, and when I came to I was down on 6th street, and the blood was running down my neck. I was confused, and wouldn't even have been able to tell anyone my address, but

Defendant's Pre-Trial Exhibit No. 1—(Continued) could have walked there all right. The last spell was 2 or 3 weeks ago, I woke up down in the Emergency Hospital, I was sick to my stomach, vomited, and the muscles in my neck were sore, also muscles in abdomen were sore. I sleep pretty good, but it seems like I have the spells at night sometimes too, they wake me up, I might have a mild attack for a couple of nights in succession, then none for several weeks. The spell wakes me up and then I try to fight it off. I don't set the bed or dribble in my clothes, and don't bite my tongue during the attacks. My appetite isn't very good. Bowels seem to be regular, move once a day. Sexually I'm all right. I have a dull ache in my head after the spells, and feel confused, don't think I could even tell anyone my name afterwards." etc.

Neurologic: A slender, fairly well developed and nourished white male, manifesting no disturbance in gait, station, speech or coordination, except that he has a little more difficulty standing on right foot in placing opposite heel to knee. Back appears to be rigid. Musculature is in fairly good state of physical nutrition. No atrophy nor paralysis. There are no constant tremors, but at times both lower extremities tremble, more mraked on the right. Sensory System, there are no complaints of pain on palpation or percussion over any area. No evidence of nerve tenderness, and no impairment of perception. Vibratory sense is normal in both lower extremities. Reflexes, deep and superficial are all present and within normal limits, except that

Defendant's Pre-Trial Exhibit No. 1—(Continued) knee jerks are obtained by suprapatellar percussions, bilateral, and while heel jerks appear to be diminished, there is a rapid movement in both ankles, like a very fine sustained clonus. Sphincters intact. No toe extension reflexes found. Patellar clonus is sustained, bilateral. Kleppelweil not found. Cranial Nerves, small, vision and taste are unimpaired. Patient complains of roaring in both ears just before seizures. 5th and 11th are negative. Mimicry, movements of tongue and deglutition are undisturbed. Eyes are not prominent; fields, grounds and movements are normal, normal cupping, no nystagmus. Pupils are equal in size, regular in outline, react normally to light and in accommodation. Thyroid Gland is negative. Hands and feet are warm and dry, palms are not calloused. In the Mental Field, except for apprehension, and self-concern, nothing obnormal is elicited. He is quiet, pleasant and cooperative.

Conclusion: This patient for years has been rate as permanently disabled on account of atrophy, muscles of back; curvature of spine, with ankylosis; and arthritis, chronic. We have demonstrated some abnormality in both lower extremities, more marked in the right, and patient gives a history of seizures, [182] during which he loses consciousness.He states that right upper extremity has a feeling of heavy helplessness before he loses consciousness, at the same time there is a roaring in the ears, and then oblivion. After he first finds himself it requires several moments before he becomes oriented. This

Defendant's Pre-Trial Exhibit No. 1—(Continued)
history highly suggests epileptoid seizures, and inasmuch as the first occurred about a year ago, they should be due to some organic disease or to intoxication. He denies the use of alcohol or other drugs. We recommended lumbar puncture for spinal fiuid study, but patient declined, stating he had plenty of trouble with has back already. We feel unwarranted at this time in concluding any diagnosis. We examined to patient the difficulties arising out of his unwillingness to have a spinal fluid study, and he stated that should seizures persist, or any new disturbances arise, he would report to his hospital for further study.

Diagnosis: 1095—Undiagnosed. (Alleged seizures.)

F. J. ERNEST, M.O.
Neuropsychiatrist

FJE/aih

Veterans Administration
Portland, Oregon

Xray lab. Date: 10/24/32

You are requested to examine the below captioned beneficiary with reference to xray entire spine for residuals of fracture.

H. M. READ, M.D.

CONSULTANTS REPORT

Date: Oct. 25, 1932

Six flat radiographs of the entire spine, upper 2/3 of the pelvis, A.P. and lateral projections: The bones making up these parts are in good alignment

Defendant's Pre-Trial Exhibit No. 1—(Continued)

except for the spine which shows a double scoliosis with convexity to the left in the upper lumbar region and to the right in the lower dorsal region. The bones have good contour and density except in the regions mentioned. There is a deformity of the first lumbar vertebra with compression of the anterior portion of the body, with signs of bony destruction, and partial fusion of the bodies of the 12th dorsal and 1st and 2nd lumbar vertebrae. These conditions have the appearing of being the result of an old injury. There is no other frank evidence of bony destruction or bony production in the cervical, dorsal or lumbar spine. The 5th lumbar vertebra is partially sacralized. Both sacroiliac joints show increased density with some signs of fusion on the left.

THOMAS S. CARRINGTON
Consultant.

Name	Classification	C-Number	
Mahoney, Wm. V.	VB	430-162	HMR

[183]

Veterans' Administration
Portland, Oregon

MEMORANDUM TO PATIENTS

Date: Oct. 24, 1932

This office is desirous of obtaining a record of your industrial history since your discharge from the service. Will you please fill out the blank below, listing all work you have done since discharge,

Defendant's Pre-Trial Exhibit No. 1—(Continued)
sign the blank and Hand To Your Surgeon when completed.

1. What was your occupation when you entered the service? Plaster helper.

What wages were you receiving? Day $4.00.

2. List all the work you have done since discharge under the following heads:

Haven't been working since placement training after getting of University of Washington.

WILLIAM V. MAHONEY
Signature of Patient

H. M. READ
Signature of surgeon-witness

30. Additional: None.

1—1095 N.P. Undiagnosed.

2—3081 Fracture, lumbar vertebrae, 1st and 5th and 12th dorsal, healed with fusion and ankylosis and loss of 75% of dorsal and lumbar bending.

3—3008 Arthritis, chr. traumatic, dorsal and lumbar.

32. Is the claimant bedridden? No Is he able to travel? Yes Does he need hospitalization? No Is an attendant necessary for travel? No Is the claimant mentally competent or incompetent? Comp Do you consider a guardian necessary? No Did you examine him yourself? Yes Date 10-24-32.

Name of examiner. H. M. Read Title Examiner.

33. Statement by claimant. My answers to Question 9 have been read to me, and I hereby certify

Defendant's Pre-Trial Exhibit No. 1—(Continued) that the complaints recorded are all that I am suffering from, to the best of my knowledge and belief.

Signature of claimant

/s/ WILLIAM V. MAHONEY.

We, the undersigned, have examined the above named claimant, reviewed his records, concur in the above diagnosis, and it is our opinion that he should be rated on a permanent basis in accordance with R & PR 1105 for disabilities above, not including 1095.

/s/ DR. H. M. READ
/s/ DR. F. J. ERNEST
/s/ DR. W. W. FRANK. [184]

REPORT OF NEUROPSYCHIATRIC EXAMINATION

Admission Examination
Admitted April 5, 1934
C-430 162

Claimant's Name Mahoney, William V. Married.

Last service, rank, and organization: Pvt. Co. 3, S. Bat. Army School.

Present Address: Veterans Adm. Facility, American Lake, Washington.

Legal Residence: 2405 Sixth Street South, Portland, Oregon.

Age: 37 Color: White. Occupation: office work.

Date of induction: July 13, 1917. Date of Discharge: May 22, 1920.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Family History Father, Thomas Mahoney, born in Illinois. Occupation, bricklayer and plasterer. Health supposed to have been good. Died in 1919 at the age of fifty-five, cause not known to patient. Mother, maiden name Joanna McWharter, born in Minnesota, was very religious. Died in 1933 at the age of seventy-five, supposed to have been ill for some time in a hospital prior to death. She died from cancer. Brothers: Three, ages forty-three, thirty-six, and thirty-four, living and apparently in good health. One sister living and in good health, at the age of forty.

Marital: Wife's maiden name, Clara Swanson, age forty, born in Minnesota, common schooling. Married claimant May 27, 1920. Health is fair. No children.

Claimant denies any mental or nervous diseases in family and there is no history of same.

Personal History Claimant was born at Flandreau, North Dakota, April 11, 1896. Supposed to have finished the eighth grade in school, then helped his father and learned the trade of plasterer, from 1913 to 1915. In 1915 he took up the occupation of auto mechanic, at which he worked until he enlisted in the army in 1917. Patient claims to have had the usual diseases of childhood, no sequelae. Denies any serious diseases, accidents, or injuries prior to service. Denies venereal diseases, use of drug, admits the moderate use of alcoholics, especially beer. Uses tobacco. Denies any conflicts with

Defendant's Pre-Trial Exhibit No. 1—(Continued)

the law prior to service. Got along well with everybody, enjoyed various sports.

Military History Patient enlisted at Minot, North Dakota, July 13, 1917. Served as Private, Third Company, Service Batn., Army School, and was discharged honorably May 22, 1920, S. C. D., at Fort Sheridan, Illinois, due to arthritis, chronic, traumatic, following an injury. Patient states that while overseas at Landres, France, on November 11, 1918, he was delivering commissaries, and a stack of sacked potatoes fell on him, injuring his back. States he was hospitalized at Landrew, France, where he received what was evidently an Albee operation on his spine. States that for three months following this operation he was in a frame, following this he was in a cast for sixty days, and then wore a brace until some time during May, 1919. He was returned to the States in the Hospital Ship Mercy. He was first hospitalized in New York, and from there he was sent to Fort Douglas, where he remained a short time, then went [185] to Des Moines, Iowa. From there he was sent to Fort Sheridan, where he remained until he received his discharge on May 22, 1919. Denies any other illnesses, accidents, or operations while in service.

Post-war History After discharge from the service claimant was returned to Minot, North Dakota, but owing to the condition of his back he was unable to work. He was granted vocational training by the Government, then came to Portland, Oregon, where he entered training as an accountant Janu-

Defendant's Pre-Trial Exhibit No. 1—(Continued)

ary 29, 1922, continuing until May 8, 1924. Part of this training was at the University of Washington, Seattle, Washington, and part of it at the Benhke-Walker School, Portland, Oregon. Since completing his vocational training it is evident he has not been gainfully employed. He has lived off his compensation, which was sixty percent to July 1, 1933, and forty percent since that time, supplemented by his wife's earnings. He has also done odd jobs of bookkeeping here and there, wherever he could get them. States that he has been unable to do any other work where it was necessary for him to use any great amount of strength, as his back would not permit it. The history shows that when he was not occupied what little money he did have he squandered in gambling and dancing.

History of Onset From the social history as given by the wife it is evident that he first started having seizures over five years ago. Claims wife does not know the exact date when they started. At first they occurred only two or three times a year and they would be months apart, but during the last two years they have been coming on more frequently. States he has two or three in one week and then will go for a month or more. They occur any time during the day or night without any regularity as to time. States he loses consciousness anywhere for a few minutes to ten or fifteen, and lies in a sort of daze or stupor at times, sleeping for a coupoe of hours, then gets up and seems to be quite normal again. Complains of the soreness of

Defendant's Pre-Trial Exhibit No. 1—(Continued) his muscles after a seizure. The wife states that at times he has some warning of seizures coming on but not always enough time to permit him to lie down. She gives a very accurate account of the character of the seizures. She states that he loses consciousness, turns pale and white, head twitches to one side, and the whole body gets rigid and stiff. At times he bites his tongue. No soining of clothing during attacks. Aside from the seizures, which come on at irregular intervals, she states that his back bothers him a great deal, although he has been fairly well physically.

During the last few years he has become more irritable and quarrelsome and she states he drinks to the point of becoming intoxicated in recent years. When he is under the influence of liquor he becomes especially quarrelsome and becomes so abusive toward his wife that she fears he will do her bodily harm. A short time prior to his being sent to the hospital at Salem, Oregon, she had to leave home because she was afraid of him. States he came to see her almost every day at her work. He was inclined to be suspicious and jealous of his wife's friends.

The officers who picked her husband up stated to the wife that they found him wandering around in a daze and there had been a report that he tried to or talked of trying to jump into the river. His condition finally became such that he was committed to the Oregon State Hospital, Salem, Oregon, [186] on March 9, 1934. The dazed condition he

Defendant's Pre-Trial Exhibit No. 1—(Continued) was in when picked up on the street by the officers was probably due to a seizure.

Diagnosis at the Oregon State Hospital was epileptic deterioration, undoubtedly traumatic in origin. He remained in that institution until his transfer to the Veterans Administration Facility, American Lake, Washington, on April 5, 1934.

Industrial History From the time of his discharge from the army up until 1922 the patient apparently did very little if anything, as he was recuperating from his back injury. In 1922 he was granted vocational training as an accountant, studying this until 1924. Following completion of this course he evidently did not make any business connections and did not earn a living but depended entirely upon his wife's earnings plus his compensation from the Government.

Hospitalizations Oregon State Hospital, Salem, Oregon, March 9, 1934, to April 5, 1934. U. S. Veterans Administration Facility, American Lake, Washington, April 5, 1934, remaining.

Present Complaint "These seizures that I have and also my back when I get run down and tired. At such times I have a great deal of discomfort in my back and it is hard for me to do anything."

Physical The claimant is a fairly well nourished and developed white male, height 68½ inches, weight 153 pounds. Head and scalp apparently normal. Scanty hair, blue eyes. Eyes, ears, nose and throat apparently normal. Chest is broad, deep, good,

Defendant's Pre-Trial Exhibit No. 1—(Continued) free and equal expansion. Lungs normal to palpation, percussion, and auscultation. Heart is normal in position and size, rhythm is regulars, no murmurs or thrills. Blood pressure 130/80. Superficial arteries soft and compressible. Abdomen is flat, muscles firm, no masses or tenderness elicited. G. U. negative. No hernia. No hemorrhoids. Bones, joints, and extremities are normal, with the exception of flat feet, second degree, bilateral. There is also a bony abnormality from the ninth dorsal vertebra down, and over this area there is a linear scar, postoperative, 1/8 inch wide and 9 inches long, due to an Albee operation which was performed on his spine, resulting from an accident while overseas. This operation was performed November 11, 1918. There is almost complete lack of motion from the ninth dorsal to the second lumbar, due to fixation. Skin is clear, moist, free from disease.

Neurological All deep and superficial reflexes of the upper and lower extremities present, equal, and active. There is no evidence of cranial nerve involvement. Deep and superficial sensation apparently normal. Coordination tests performed accurately, no pathological reflexes demonstrated.

Laboratory Examination

Sputum, April 6, 1934: Character, saliva. Tubercle bacilli and blood not demonstrater. [187]

Urinalysis, April 7, 1934: Quantity, 760cc. Color, amber. Reaction, acid. Odor normal. Sp. gr. 1025. Albumin, extremely faint trace. Sugar

Defendant's Pre-Trial Exhibit No. 1—(Continued) negative. Mucus not demonstrated. W. B. C., occasional. R. B. C. not demonstrated. Casts, hyaline, occasional. Epithelia, many. Cylindroids, spermatozoa. Bile, negative. Bacteria, not demonstrated. Crystals, not demonstrated. Indican, three plus positive. Acetone, negative. Diacetic acid, negative. Beta-hydroxybutyric acid, negative. Special examinations of urine: Total solids 58.25 gms. per 1000cc. Total acidity 500cc N/10 NaOH per 1000cc.

Blood Wassermann, April 11, 1934: Complement fixation test for syphilis, negative. Cholesternized: Kolmer St. 18 hr. 8°C, 00 negative. Exts. (U. S. V. V. 37°, ½ hr., negative.

Mental It is evident from the social history as given by the claimant's wife that there has been some mental disturbance noted for at least the past five years and possibly longer. For the past five years the patient has been having seizures which, as described, are epileptic in character. These seizures at first occurred only a few times a year, but during the last year or two they have become much more numerous, more severe, and of longer duration. There has also been an increasing irritability and antagonism toward his family. He has become somewhat careless in his appearance and habits and while formerly he was more or less sociable, of late years he has been inclined to be seclusive, staying by himself, frequenting pool halls and gambling houses. At one time he thought that his wife was untrue to him and the history shows that his own morals are not above reproach. It was evidently after

Defendant's Pre-Trial Exhibit No. 1—(Continued) he had one of these seizures in Portland, Oregon, that he was picked up by the police in a dazed condition on the street. He showed evidence of laceration to the side of the tongue, which he evidently had bitten during an attack. He was irritable, confused, and was committed to the Oregon State Hospital at Salem, Oregon, at which place he was diagnosed epileptic deterioration, probably traumatic in origin.

While at the hospital in Salem he had no further seizures. He was transferred to this facility on April 5, 1934, and to date has been free of any suggestion of epileptic seizures.

The patient is oriented for time, place, and person. Memory is good for remote events, somewhat defective for recent. His retention of school knowledge is fair. He has some insight into his condition in that he realizes the nature of his disability and he also claims to realize that he is better off when he is working at some form of light occupation. His judgment is somewhat defective and he shows a mild degree of deterioration, possibly epileptic in character. He is inclined to be rather shifty, circumstantial, and somewhat evasive when questioned. He denies the use of intoxicants. The social history and the statements of various people for whom he has worked during the past few years show that at times he drinks to excess, particularly during these last few years.

Since his admission to this facility he has shown no evidence of an active psychosis, although he does

Defendant's Pre-Trial Exhibit No. 1—(Continued) show some slight degree of deterioration. He denies the existence of delusions, hallucinations, or persecutory ideas, and none are elicited. He is apparently well in touch with his surroundings and takes an active interest in his various forms of occupational therapy and is well up in current events.

[188]

Summary It is quite evident from the history of this case that his difficulties started, possibly, during the war, when he received a severe injury to his back, which necessitated an Albee operation on the same. Since discharge from the army he has completed a course of vocational training in accountancy, but did not make any particular use of same in securing steady employment. The wife states that approximately ten or twelve years ago she noticed a decided change in his personality, that he was beining to be irritable and fault finding. She states that he would wake up in the morning in a dazed condition. The wife said that the first seizure occurred approximately five or six years ago, but she thinks he must have had them before from the way he acted. At first the seizures were very infrequent, only three or four a year, but during the past two or three years they have become much more frequent. He has been more irritable prior to and following seizures and would be dazed for a considerable period of time following them. The history shows that the last seizure he had was just prior to his commitment to the Oregon State Hospital, Salem, Oregon, March 9, 1934, at which time

Defendant's Pre-Trial Exhibit No. 1—(Continued)

he was picked up by the police, who stated he was wandering about in a dazed, confused manner. While in the Oregon State Hospital he was not observed in any seizures. He was transferred to this facility April 5, 1934, and to date has had no seizures here.

Diagnosis 1. Epilepsy with deterioration (from history) —0526.

2. Arthritis, chronic, traumatic, dorsal and lumber spine—0139.

3. Fracture, lumbar vertebrae, first, fifth, and twelfth dorsal, healed with fusion and ankylosis—3082.

4. Flat feet, bilateral, second degree —0587.

5. Cicatrix, over spine, post-operative, non-symptomatic—0285.

Remarks The patient is partially sociabley and economically inadaptable by reason of the above diagnosis. It is recommended that he have a further short period of hospitalization to verify diagnosis No. 1, inasmuch as he has had no seizures since being in this facility. He is considered competent and not insane at this time.

Place Veterans Administration Facility, American Lake, Washington.

Date Staffed May 10, 1934.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Approved:

/s/ T. F. NEIL,
T. F. NEIL, M. D.,
Clinical Director.

/s/ F. L. WRIGHT,
F. L. WRIGHT, M. D.,
Neuropsychiatrist.

/s/ L. F. WOOD,
L. F. WOOD, M. D.
Neuropsychiatrist. [189]

LETTERGRAM

This form is to be used instead of the telegraph for urgent communications when it can reach destination in time to effect its object.

For use in the mails it should be inclosed in Lettergram envelope and forwarded by first mail.

In reply
refer to H2-1913 Office American Lake
Washington

Subject: Mahoney, William C.
C-430 162 Date June 13, 1934

To: Manager
Veterans Administration Facility
Marquam Hill
Portland, Oregon
(Attention—Chief Attorney)

Dear Sir:

This will advise you that the above captioned claimant was discharged from the records of this Facility as of June 10, 1934 in accordance

Defendant's Pre-Trial Exhibit No. 1—(Continued)

with Para. 7319, R. & P. Medical, AWOP more than forty-eight hours.

Inasmuch as the patient is considered competent and this is his second elopement within a short period, it is felt that this should be considered a disciplinary discharge.

The diagnosis in this case is epilepsy with deterioration (from history).

Very turly yours,

GEO. R. STALTER, M. D.,
Manager.

Veterans Administration Facility
American Lake, Washington
July 18, 1934.

Manager
Veterans Administration Facility
Marquam Hill
Portland, Oregon
In reply refer to:
H5b-1913
Mahoney, William V.
C-430,162
Attention: Psycriatric Social Worker

Dear Sir:

We are enclosing herewith, in accordance with R. & P. Medical, 7085, paragraph (f), copies of social service history in the case of the above named who was discharged from this [190] Facility as of June 10, 1934, being absent without permission for

Defendant's Pre-Trial Exhibit No. 1—(Continued)

more than forty-eight hours. Diagnosis is Epilepsy petit mal.

This claimant while in the hospital was quiet and cooperative and was given a diagnosis of Epilepsy with deterioration (from history) on May 10, 1934. While in the hospital he was obesrved carefully and on May 25, 1934, while working in the mess hall he suddenly stood staring into space, became pale, perspired and seemed somewhat dazed for about five minutes, then went on with his work. A few days after this he had a similar attack and both these attacks resembled Epilepsy petit mal. On May 22, 1934, the patient left the kitchen in Building No. 2 with a food cart, taking it to Building No. 3, said he would return immediately. He did not return during that day. He went to Portland, Oregon, and his wife reported that he would return to the hospital which he did voluntarily and he was placed on a closed ward and reassigned to his occupational therapy assignment in the kitchen. He was well thought of by all the employees in the building and on the ward and was allowed the privilege of going to and from the ward unaccompanied. On June 10, 1934, about 8:20 A. M. he was seen going to the baseball field and the attendants reported that he was playing ball with the other patients until ten o'clock to return to his occupational therapy assignment in Building No. 2, but he failed to arrive there. A telegram was sent to his wife of his being absent from the hospital without permission and on the 12th of June she

Defendant's Pre-Trial Exhibit No. 1—(Continued)

notified by telegram that he had been home and left. He was neat in personal appearance, quiet, cooperative, pleasant and congenial. He was oriented in all three spheres, his memory was excellent for remote events but seemed somewhat defective for recent events. His retention of school knowledge was fair, but an insight into his condition and realized the nature of his disability.

Owing to his tendency to leave the hospital without permission, it was evident that his judgment was defective and at times he would be somewhat evasive when questioned closely but during the period of time he was at this Facility he showed no evidence of active psychosis and had only two petit mal attacks. Owing to his tendency to continually elope, he was discharged as A.W.O.P. more than 48 hours under Paragraph 7348 Regulations and Procedure, Medical.

It was the opinion of the Staff that the patient should be discharged under Paragraph 7348 Regulations and Procedure (Medical) on account of his tendency to continually leave the hospital without permission. He was partially socially and economically inadaptable by reason of his petit mal attacks. Inasmuch as these seizures had been very light he was considered competent and not insane at the time of his discharge.

Two copies of a social report covering the onset of patient's disability were received from your of-

Defendant's Pre-Trial Exhibit No. 1—(Continued)

fice under date of April 19, 1934, in response to our request of April 10, 1934.

Very truly yours,

GEO. R. STALTER, M. D.,

Enc. Manager. [191]

Veterans Administration Facility

Portland, Oregon.

Dr. Ernest Date: 10-10-35.

You are requested to examine the below captioned beneficiary with reference to need for Hosp. care.

L. O. CAREY, M.D.

CONSULTANTS REPORT

Date: 10/10/35

This patient is not intoxicated but he is psychotic at this time. Not fully oriented, sits gazing into space, talking as tho in conversation and expression changes in accordance. Tip of tongue has been bitten and bleeds, clothing is badly soiled. He was picked up by police because he was wondering about the streets, muttering to himself, and could give no account of his actions. He is delusional and hallucinated, incompetent at this time. He should have t'm't under N.P. supervision on a closed ward.

Diag. 0525 Epilepsy Grand & Petit mal with Psychotic episodes. Psychotic at this time.

Recom. Returned to American Lake Hospital and guardianship.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Mahoney, Wm. V.	P-105C	430162
Name	Class	C-No.

F. J. ERNEST,
Consultant.

Copy of this report made and referred to American Lake with P-10. H.O. 10/10/35

REPORT OF NEUROPSYCHIATRIC EXAMINATION

Admission Examination

Admitted: October 11, 1935
C-430,162

Claimant's name Mahoney, William V. Married.

Service, rank and organization: Pvt., Co. 3, Service Bat., Army School.

Present address: Veterans Admin. Facility, American Lake, Washington.

Legal residence: College and Sixth, Portland, Oregon.

Age: 39 Color: White Occupation: Office worker.

Date of induction: July 13, 1917 Date of discharge: May 22, 1920. [192]

For family history, personal history, military history, post-war history, and history of onset see admission examination dated April 5, 1934.

Continued History of Onset On May 22, 1934 the patient left the hospital without permission but returned voluntarily. On June 10, 1934 patient again eloped and was discharged as of that date

Defendant's Pre-Trial Exhibit No. 1—(Continued) in accordance with Paragraph 7348, Regulations and Procedure, Medical, being absent without permission more than forty-eight hours. He was readmitted to this Facility October 11, 1935 from the jail in Portland, Oregon, where he had been for several days. He was picked up by the police because he was wandering about the streets muttering to himself and could give no account of his actions.

Present Complaint "I have those spells but I'm all right now and can go out and take care of myself."

Physical While male, height 69½", weight 140 lbs., well developed and fairly well nourished. He has brownish red hair, blue eyes and ruddy complexion. There is a longitudinal, linear scar over the dorsal and lumbar spine 10½ inches long. This is post-operative following injury while in Service. He has a small scar on right side of forehead from injury received by falling during one of his seizures. He has a large bunion at the junction of the first tarsal-metatarsal joint, great toe, right foot, large toe over-riding the second toe. He has flat feet, second degree, which are non-symptomatic. Throat is normal. Tonsils were removed in 1912. Nasal septum is deviated to the left. Teeth: Few are absent, others are in very good condition. There are no endocrinopathies. There is no evidence of venereal disease and there is no history of venereal infection at any time. Heart outlines in usual position, relative area of dullness about normal, no mur-

Defendant's Pre-Trial Exhibit No. 1—(Continued) murs or thrills. Pulse sitting 72, after exercise 88, three minutes after 72. No sclerosis or varicosities. Blood pressure is 120/80. Chest is long, broad and of medium thickness. Movements are deep and equal. Lungs show no pathlogy. Tactile fremitus is normal over all areas. Percussion resonance shows no unusual changes. No harsh breath sounds or rales are heard on deep expiratory cough. Abdomen is scaphoid; no masses, no areas of tenderness or rigidity. No hemorrhoids.

Neurological Eyes: Vision right 20/35, left 20/35. Both are corrected to 20/20 by a plus .50 S. Diagnosis, Hyperopia, mild. Pupils are 4 mm. in diameter and react normally to light and accommodation. There is no muscular imbalance. Fundi are normal. He has a chronic conjunctivitis. Senses of taste and smell are normal. Cutaneous sensibilities and stereognostic sense are normal. Organic reflexes are well controlled, except during seizures when it is stated that he has incontinence. Deep reflexes—patellar, Achilles, elbow and wrist—are all present and equal and of normal intensity. No ankle clonus. Superficial reflexes—cremasteric, abdominal, corneal and pharyngeal—are all present and normal. No Babinski. Gait is not involved. Speech: Has a rather hesitating drawl. Articulation is rather clear. Coordination tests are well performed. Romberg is negative. He has fine tremors of extended fingers, none of tongue. [193]

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Laboratory Examinations

Sputum, 10-12-35—Character, saliva. Tubercle Bacilli not demonstrated. Blood not demonstrated.

Urinalysis, 10-15-35—Qauntity 940 cc. Color, amber. Reaction, acid. Odor, normal. Sp. gr. 1019. Albumin, heavy trace. Sugar, negative. Mucus, not demonstrated. W.B.C., occasional. R.B.C., not demonstrated. Casts, not demonstrated. Epithelia, occasional. Bile, negative. Bacteria, not demonstrated. Crystals, ca oxalate one plus, amorphous phosphates one plus. Indican, four plus positive. Acetone, negative. Diacetic Acid, negative. Beta-hydroxy-butyric Acid, negative. Total solids 44.27 gms. per 1000 cc. Total Acidity 330 cc N/10 NaOH per 1000 cc.

Blood Wassermann. 10-14-35—Complement Fixation Test for Syphilis negative. Cholesternized: Kolmer Std. 18 hr. 8°C 00 negative. Exts. (USVB 37°, ½ hr. negative.

X-Ray of Chest and Spine. 10-28-35—A. P. view of dorsal and upper lumbar shows old injury to 12th dorsal with fusion and ankylosis. No evidence of injury to the 5th. No evidence of arthritis.

X-ray of chest shows a moderate degree of increased density of each central area. Hilar shadow contains very few small calcifications. Apices and peripheral zones are clear. Diaphragmatic shadows are smooth and regular.

Mental When admitted to the hospital patient was in fairly good contact and correctly oriented.

Defendant's Pre-Trial Exhibit No. 1—(Continued) However, he was a little hazy about what caused his re-admission to the hospital. He said that he was told that he was picked up on the streets of Portland as he had had some seizures. He had a bruised area on his head which he saw was caused by a copy striking him with a billy. Speech was somewhat irrelevant and he rambled somewhat about his in-laws. He thought they were jealous of him because he was getting compensation. He co-operated very well for the routine of admission. Remembered some of the nurses and attendants from his previous hospitalization. He now helps some with the ward work and writes very nice letters home. However, at times he appears rather dull and asks quite frequently to be allowed his liberty again. Says he will not run away. Is neat and clean about his person and habits. Has a good appetite. Rests very well at night. He complains some of his back hurting him. Says it interferes with his work, especially if there is any stoping to be done. According to the attendant who brought him here from Portland he had a petit mal attack while on the road and attempted to grab the chauffeur. It was stated that he had been suffering three or four seizures each day. Patient at times has been very delusional. He states that they have been shooting stuff at him for a year or so, that it was the city employees and looked like the same guy that did the shooting in Wyoming when they tried to make him confess. He says that people could tell what he was thinking about before he

Defendant's Pre-Trial Exhibit No. 1—(Continued) even uttered a sound. Before a seizure he gets dizzy and hears sounds in his ears as though there were two people talking. After being discharged from this hospital June 10, 1934 he did very little work of any kind. However, he says he was on jury duty in Portland for one month, receiving $3.25 per day. He saw service on two civil suits. He says he looked for jobs a few times while [194] out but could not find any work. He spent the time visiting his friends. He says that his friends are on the up and up and not just common ordinary trash. Some are barbers, tailors and lawyers. He admits having drunk some beer occasionally. Says he drank very little hard liquor, that he felt good several times but was not drunk. Patient states that he probably had about thirty seizures during the time he was absent from the hospital, that he usually has incontinence during his seizures and it is hard for him to think for quite some time. Thoughts come slowly and during this examination his cerebrations were extremely slow the greater part of the time. He says that he feels dazed sometimes for almost a whole day. He doesn't know whether this is from the jar of his fall or from the seizure itself. Asked whether he was persecuted while at home he replies that he was not. Says that when he went to the bank there was on particular fellow who was always there and he thought this fellow followed him around, probably with the idea of trying to get his money. However, to obviate this he would always go directly

Defendant's Pre-Trial Exhibit No. 1—(Continued)

from the bank and pay his debts. Also, he states that those fellows came to his door just prior to his coming to the hospital, talking loudly, "mugged" him and took his finger prints. He thinks possibly this could be partially his imagination. He does not think they had any authority to do this without his having committed a crime. After they took him to jail they kept him until he was returned to this hospital.

At the present time patient says he feels fine. His memory is defective for both remote and recent events. He gives the correct date of his arrival here. He is unable to give the month or day of month that he left the hospital. Gives date of birth correctly. Is unable to give the dates of his enlistment or discharge from service. Says the World War began June or July 1917. Wilson was President then, Roosevelt now. He is unable to give the date of his marriage or wife's birthday. Correlation of dats and facts and retention are rather poor. He is very good in mathematics; subtracts successive 7's from 100 with only few mistakes. Says the Mississippi is the largest river in the United States. Names all five great lakes. He is unable to give the population of the U.S. Says population of Chicago is one hundred thousand, New York one hundred fifty thousand. States in the Union, forty-eight. Pershing was the general in the World War. Civil War was fought in 1876. General Jackson was one of the main generals. Spanish American War was in 1898. Teddy Roose-

Defendant's Pre-Trial Exhibit No. 1—(Continued)
velt was the main officer. There is no flight of ideas. He admits auditory hallucinations at times. However, they are not bothering him at this particular time. He says that sometimes they are men and women both. Their voices are very accusatory in nature. He also thinks that at times he has been doped and his mind can be read. He is not so sure that this is purely imagination. He says he is never depressed, that he feels different now and does not let the blues get him down. The only thing he worries about, he says, is the lock and key on the hospital doors to keep him from his freedom. He says, "If you just let out so I can walk around I will be all right and take care of myself but just listening to those nuts on the ward talk would make any guy nervous." He has some insight into his condition as he realizes he has seizures but he has been unable to exercise good judgment.

Summary White male, 39 years of age, born April 11, 1896 in South Dakota, married, office worker by occupation. He was re-admitted to this hospital October 11, 1935. His first admission was on April 5, 1934 and he was discharged June 10, [195] 1934, as being absent without permission. He had two petit mall attacks during his first hospitalization. There is nothing of particular interest in the family history except that his mother died of cancer. Birth and early life were uneventful. He made a fairly good adjustment up until the time he entered service. He received an injury during service and was discharged on an S.C.D. as the

Defendant's Pre-Trial Exhibit No. 1—(Continued)

result of this injury, since which time he has been drawing compensation. He had vocational training in 1922 but was never able to take the proper advantage of this training. He did not make a very good economic adjustment at any time. The first seizures recorded were in 1929. They were of more or less frequency and he became quite irritable and showed considerable deterioration and letdown in his mental field which led up to his hospitalization. He was drinking to some extent. However, it is not believed that this played any part in causing the seizures. At his injury was during service in 1918 the onset of the seizures is probably too long afterwards to be wholly the result of this injury. Some of his seizures are described as being of the grand mal type while others are petit mal attacks. The last seizure he had was while on the road from Portland to this hospital the day of his admission, which was of a petit mal nature. Physical findings are a 10½ inch linear scar over the dorsal and lumbar vertebrae, post-operative; large bunion at junction of first tarsometatarsal joint of right great toe with an over-riding large toe, same foot; flat feet, bilateral, second degree, non-symptomatic; deviation, nasal septum; absence of teeth, acquired. Also, he has mild hyperopia and chronic conjunctivitis. Neurological findings are negative except for fine tremors of extended fingers and a rather slow, hesitating, drawling speech. At times when patient is quite delusional he admits auditory hallucinations. He

Defendant's Pre-Trial Exhibit No. 1—(Continued)

has memory defects. Power of retention is reduced. School knowledge is fairly well retained. He has a typical epileptic personality with a rather slow drawling speech. He has some insight into his condition but is unable to exercise good judgment.

The interval history given by patient's wife states that he is not a user of hard liquor but does drink quite a little beer at times. It also states that on October 7, 1935, just prior to his admission here, he suffered six very severe seizures of the grand mal type, was untidy from both bowels and kidneys during two or three of the seizures, had stertorous breathing and was cyanotic. Each seizure lasted for about thirty minutes. He was irritable at times and confused for about three or four hours after the seizures. During the time he was home he fell on the street several times, injuring himself but not seriously. Dr. Zigler of the Medical Arts Building in Portland, Oregon, the wife says, has witnessed the patient in these seizures. She also states that he was confused when picked up by the police on the street. This was following a seizure.

On November 29, 1935, while out for a walk on the hospital grounds, patient suffered a seizure. He was talking to the other patients and suddenly fell, striking the right side of his face on one of the part benches, and received several abrasions. He was confused for about five minutes afterwards. He was cyanotic during the seizure but there was no tonic or clonic convulsive movements. He was brought back to the ward and after his arrival on

Defendant's Pre-Trial Exhibit No. 1—(Continued)
the ward he was unable to realize that anything unusual had happened and did not know that he had had a seizure. [196]

Diagnosis

Psychosis, epileptic, deterioration—1398
Conjunctivitis, chronic—0312
Hyperopia, mild—0777
Deviation, nasal septum—0417
Flat feet, second degree, non-symptomatic—0587
Hallus valgus, right great toe—0662
Cicatrices, non-symptomatic—0285
Absence of teeth (7), acquired—0023.

Remarks It is the opinion of the Staff that the patient is incompetent, socially and economically inadaptable and requires hospitalization.

Place Veterans Administration Facility, American Lake, Washington.

Date Staffed October 29, 1935

Approved:

/s/ T. F. NEIL, M. D.
Clinical Director
/s/ J. M. WORTHEN, M. D.
Neuropsychiatrist
/s/ C. A. HUNSAKER, M. D.
Neuropsychiatrist

Report of Neuropsychiatric Examination
Discharge Examination
Admitted: October 11, 1935
C-430,162

Name Mahoney, William V. married.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Service, rank, and organization: Pvt., Co. 3, Service Bat., Army School.

Legal residence: College and Sixth Streets, Portland, Oregon.

Age: 39. Color: White. Occupation: Office worker.

Date of induction: July 13, 1917. Date of discharge: May 22, 1920.

For family history, personaly history, military history, post-war history, and history of onset see admission examination dated April 5, 1934 and October 29, 1935.

Present Complaint The only complaints the patient made before he left the hospital was that he was not allowed parole privileges.

Physical No change in physical condition since examination of October 29, 1935. Last weight was 159 lbs.

Neurological No change in neurological condition.

[197]

Laboratory reports See examination dated October 29, 1936.

Mental Patient was in fairly good contact. He was clearly oriented but he was somewhat hazy at times in regard to his past. During his period of hospitalization he had several minor epileptic seizures and one that was nearly grand mal in character. At times he was quite delusional, has admitted auditory hallucinations. He has a slow drawling hesitating speech. His power of retention

Defendant's Pre-Trial Exhibit No. 1—(Continued)

is reduced although his school knowledge is fairly well retained. At times he was irritable, especially after a seizure and was confused sometimes for three or four hours afterwards. He was usually pleasant to talk to and always promised that he would never leave the hospital without permission, but during his previous hospitalization he went AWOP. He has some insight into his condition, that is that he has seizures, his judgment is defective.

On January 9, 1936 the patient was transferred to Ward 61-B and on January 17, 1936 he left the hospital without permission. Search was made for the patient but he could not be located. He is therefore being discharged in accordance with Paragraph 7319, R. and P. Medical, having been AWOP more than 48 hours.

Diagnosis

Psychosis, epileptic, deterioration—1398
Conjunctivitis, chronic—0312
Hyperopia, mild—0777
Deviation, nasal septum—0417
Weak feet, second degree, non-symptomatic—0587
Hallux valgus, right great toe—0662
Cicatrices, non-symptomatic—0285
Absence of teeth (7) acquired—0023

Remarks It is the opinion of the Staff that the patient is incompetent, socially and economically inadaptable, and requires supervision.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Place Veterans' Administration Facility, American Lake, Washington.

Date of discharge January 17, 1936.

Approved:

/s/ T. F. NEIL, M. D.
Clinical Director
/s/ C. A. HUNSAKER, M. D.
Neuropsychiatrist
/s/ J. M. WORTHEN, M. D.
Neuropsychiatrist

(1/28/36 No change not referred for action. J. J. C.) [198]

REPORT OF NEUROPSYCHIATRIST EXAMINATION

Admission Examination
Admitted: Feb. 29, 1936

C-430,162

Name Mahoney, William V. Married.

Service, rank and organization: Pvt. Co. 3, Ser. Bat. Army School.

Present address: Veterans Adm. Facility, American Lake, Wash.

Legal residence: 6th and College Sts., Portland, Oregon.

Age: 39 Color: White Occupation: Office worker.

Date of induction: 7-13-17 Date of discharge: 5-22-20.

For complete family history, personal history,

Defendant's Pre-Trial Exhibit No. 1—(Continued)
military history and post-war history and onset, see examination of Oct. 29, 1935.

On January 17, 1936, this patient was working on an outside detail with ten other patients. He asked permission of the attendant to go to the lavatory and failed to return. Attendant reported that he immediately made a search, after patient's failure to return, but he had evidently escaped into the nearby brush. He was re-admitted to this facility Feb. 29, 1936, accompanied by a friend, but coming in voluntarily. His story agreed essentially with the history as given by his wife when she was interviewed by a social worker in Portland, who reports as follows: Patient felt that police were after him with trucks and motorcycles and behaved in such a peculiar manner that it was though best for him to return to the hospital. He seemed willing to return and a friend volunteered to accompany him. Wife further stated that he had frequent seizures during the time he was in Portland, fell on the street a number of times and about a month before his admission here was picked up on the street following a seizure, taken to Emergency Hospital with a badly bruised head and face, and was sent from there to Good Samaritan Hospital. According to wife he only drank an occasional beer while out of the hospital, but she states he was very much confused and imagined that all sorts of things were after him. For that reason it was thought best to return him to their hospital. Patient was not living with his wife at the hotel

Defendant's Pre-Trial Exhibit No. 1—(Continued) because her quarters were too small but he occupied a room across the street and it was their intention to get an apartment together providing he had been able to stay out of the hospital.

Physical Patient is a well developed white male. Weight 144 lbs. Height 69″. There is a small scar on the bridge of his nose and a linear scar ½″ on the upper lip, due he states from a fall on the East-side Bridge in Portland, during a seizure. Otherwise his physical examination is essentially the same as of Oct. 29, 1935.

Neurological Pupils react to light and accommodation and all extra-ocular movements are normal. Cranial nerves are intact. Motor and sensory functions are normal. Babinski and Romberg are negative. [199]

Urinalysis 3-2-36—Character-mucoid; Tubercle Baccilli not demonstrated; Blood not demonstrated.

Urinalysis 3-2-36—Quantity 750cc; Color—amber; Reaction—acid; Odor—normal; Sp. gr. 1014; Albumin—trace; Sugar—negative; Mucus—not demonstrated; WBC occasional; RBC and Casts not demonstrated; Epithelia—occasional; Bile—negative; Bacteria and Crystals not demonstrated; Indican, Acetone, Diacetic Acid and Beta-hydroxybutyric Acid all negative. Total solids 32.62 gms. per 1000 cc. Total Acidity 480 cc. N/10 NaOH per 1000 cc.

Blood Wassermann 3-2-36—Complement Fixation Test for Syphilis negative. Cholesternized: Kolmer

Defendant's Pre-Trial Exhibit No. 1—(Continued)
Std. 18 hr. 8°C (00) negative. Exts. (USVB 37°, ½ hr. negative.

Mental Patient is in good contact and correctly oriented. He says he is a little bit confused about many of the details during his absence but knows that he had numerous seizures and that on his last seizure he bruised himself severely on his upper lip and nose. He admits that he thought police with sirens and motor trucks were following him around town and that he often thought he was being shadowed. He states that he tried to get work several times during his period away from the hospital but could not secure the same. He claims he did no drinking outside of a few glasses of beer and this has been verified by his wife. Says he spent most of his time walking around the streets and visiting old friends. At present he states he is gradually getting over his fear that people are after him and that he feels he should be allowed parole of the grounds. He has been confined on Ward 6-C where he has made a good adjustment and is a good ward worker.

Summary This is patient's third admission to this hospital. Thought police were after him with trucks and motorcycles so came in voluntarily. Frequent seizures at home. None since return. Hallucinations and confusion on admission, also dissipated appearance, now disappeared. Started having seizures in 1930. These occurred two or three times a week, now not so often with lon-

Defendant's Pre-Trial Exhibit No. 1—(Continued)
intervals without seizures. Both nocturnal and diurnal. At times has an indescribable aura, at other times no aura. Some mental and moral deterioration. History of moderate amount of alcoholism which apparently bears no relation to seizures.

Diagnosis

Psychosis, epileptic, deterioration—1398
Conjunctivitis, chronic—0312
Hyperopia, mild—0777
Deviation, nasal septum—0417
Weak feet, 2nd degree, non-service—0387
Hallux valgus, rt. great toe—0662
Cicatrices, non-symptomatic—0285
Absence of teeth, acquired—0023

Remarks It is the opinion of the Staff that patient is incompetent, socially inadaptable and in need of hospitalization.

Place Veterans Administration, American Lake, Washington. [200]

Date Staffed April 15, 1936.

/s/ A. F. JOHNSON, M.D.
Associate Medical Officer

Approved:

/s/ T. F. NEIL, M.D.
Clinical Director
/s/ N. C. MACE, M.D.
Neuropsychiatrist
/s/ C. L. WHITMIRE, M.D.
Neuropsychiatrist

Defendant's Pre-Trial Exhibit No. 1—(Continued)

REPORT OF NEUROPSYCHIATRIC EXAMINATION

Discharge Examination
Admitted: Feb. 29, 1936
C-430-162

Name Mahoney, William V. Married.

Service, rank and organization: Pvt. Co. 3, Ser. Bat. Army School.

Legal residence: 6th and College Sts., Portland, Oregon.

Age: 40 Color: White Occupation: Office worker.

Date of induction: 7-13-17 Date of discharge: 5-22-20.

For family history, personal history, military history and post-war history and onset, see examination of Oct. 29, 1935.

Present complaint The only complaint the patient made before eloping from the hospital was that he should be allowed parole privileges and these had not been granted.

Physical No change since examination of April 15, 1936.

Neurological Essentially the same as of April 15, 1936.

Laboratory See examination dated April 15, 1936.

Mental Patient was in good contact, well oriented. Following his previous elopement he had

Defendant's Pre-Trial Exhibit No. 1—(Continued) frequent seizures and was readmitted to the hospital on Feb. 29, 1936. While in Portland felt he was being pursued by motorcycles and fire trucks and according to his sister, "imagined all sorts of things were after him." He came back to the hospital voluntarily, accompanied by a friend. After his admission he was cooperative on the ward, in good contact but had a tendency to be lazy in the occupational therapy shop. Was oriented in three spheres. Said he did not remember much of the elapsed time following his previous elopement. Another patient reports that he made a grill key at the O.T. shop in view of escaping. This key was found hidden on the ward.

On May 11, 1936, one of the personnel left the back [201] gate of the O.T. shop open, while carrying some material from the shop. At that time particular employee did not know there was a locked ward patient in Bldg. 18. Evidently the patient saw his opportunity to escape and although a search was made for him and the police notified he was not apprehended, and is therefore being discharged in accordance with Para. 7319, R. & P. Medical, AWOP more than 7 days.

Diagnosis

Psychosis, epileptic, deterioration—1398
Conjunctivitis, chonis—0312
Hyperopia, mild—0777
Deviation, nasal septum—0417
Weak feet, 2nd degree, non-service—0387

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Hallux valgus, rt. great toe—0662
Cicatrices, non-symptomatic—0285
Absence of teeth, acquired—0023

Remarks It is the opinion of the Staff that patient is incompetent, socially inadaptable and in need of hospitalization.

Place Veterans Administration Facility, American Lake, Washington.

Date of discharge May 11, 1936.

/s/ A. F. JOHNSON, M.D.
Associate Medical Officer

Approved:

/s/ T. F. NEIL, M.D.
Clinical Director
/s/ N. C. MACE, M.D.
Neuropsychiatrist
/s/ C. L. WHITMIRE, M.D.
Neuropsychiatrist

12-4-37mgd Per 2507 from A. Nelson
11-10-37

REPORT OF PHYSICAL EXAMINATION

Discharge

Date of admission: October 29, 1937.
Date of discharge: November 5, 1937.

C-430 162

Mahoney, William V.
2728 Broadway, Portland, Oregon. [202]
Examined VAF Portland, Oregon Nov. 5, 1937.
Birthplace—South Dakota April 11, 1896 Age—41

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Pvt. 3rd Co. Serv. Bat. Enl. 7-13-17 Disch. 5-22-20.

Personal History: Back broken—Nov. 11, 1918.

Epileptic spells since about 1930.

Tonsillectomy at age 12.

Present Illness: The patient states that during the service he suffered from intermittent attacks of generalized extreme fatigue especially of the lower extremities, "as tho I had walked 150 miles". There were never any mental changes or convulsions. That these attacks would last about a day followed by complete recovery only to reappear in about 3 to 4 weeks. These attacks continued until about 1927 when they began to be associated with actual convulsive seizures—never any incontinence of feces or urine. He has injured his tongue on numerous occasions and has been told that there is a frothy sputum about the mouth during one of these attacks. His aura is a feeling of extreme fatigue. At times he is able to ward off these attacks, by resting quietly, especially alone. On the day of admission the patient had a seizure and was brought to his hospital. After about 3 hours observation, the patient felt very much better and wanted to go home. This was thought to be alright; but after leaving the hospital he suddenly had another seizure and fell striking his head on some sharp object resulting in a laceration scalp wound, and he was again returned to this hospital and admitted. During the service the patient reecived a back injury resulting in a fracture of some of the lumbar ver-

Defendant's Pre-Trial Exhibit No. 1—(Continued)

tebrae and he also states that he was operated on the same day as the injury. That he hasn't much "strength" in his back and that there is limitation of motion.

Special Nose Exam—Dr. J. L. Ballou—11-2-37:

Complaint: Difficult nasal breathing.

Findings: The conjunctiva is almost normal. Septum moderately deflected to the left.

Diagnosis: 0417 Deviation nasal septum.

Operation report, repair of lacerations, scalp, attached.

Copy of Dr. F. J. Ernest's N.P. Exam. 11-4-37, attached.

Copy of phys. exam. made on admission, attached.

Oct. 29, 1937

Lacerations, occipital region, scalp.

Same.

The scalp around the wounds was shaven and cleaned with green soap, iodine and alcohol. The wounds were closed with several interrupted sutures of dermal, collodium dressing applied, patient was then given intra-dermal skin test and tetanus anti-toxin and gas bacillus anti-toxin administered.

Dr. J. R. Brown

Miss Frye

None. [203]

208 Repair of Lacerations, Scalp.

Good

Well developed, well nourished white male. Admitted directly to the ward from the stretcher for the repair of a recent laceration of the scalp. Ex-

Defendant's Pre-Trial Exhibit No. 1—(Continued)
amination of the scalp revealed two lacerations on the right side of the occiput, extending down to the cranium. One of these lacerations was 1½" long and the other was ½" long. There was a large hematoma in this area. The operator was unable to palpate any evidence of fracture of the skull. Patient's pupils were equal in size and reacted well to light. At the time of admission he was irrational but rapidly regained his mental faculties and there was no clinical evidence of intracranial injury.

OK

GEO. E. PFEIFFER
VA Portland, Oregon
JRB/djb

Mahoney Wm.

October 30, 1937

General Appearance: The patient is a fairly well nourished, somewhat poorly developed white male who is in a somewhat stuporous condition. He does not appear acutely ill. Hair, reddish brown with frontal alopecia. Eyes, blue. Height 68½ inches. Weight, 141 lbs.

Head and Neck: There is an incised and contused wound, recent, of left occipitoparietal region about 2 inches long. There is another incised wound adjacent and parallel to this one that is about one inch long. There are numerous old healed scars of the neck, head and nose said to be due to injuries during pervious seizures. Eyes: There is a mild chronic conjunctivitis present. Pu-

Defendant's Pre-Trial Exhibit No. 1—(Continued) pils normal in size and react well to light and accommodations. Ears: Apparently normal; no discharge.

Nose: The nasal septum is deviated markedly to the left.

Mouth: Many missing teeth. Oral hygiene good. Tonsils out. Multiple old healed scars of the tongue. Neck: Old healed scar. No cervical adenopathy.

Cardio-Vascular System: B.P. 116/74. Pulse 88/min. sitting—100/min. standing—not exercised due to condition of patient. The heart is normal in size; regular with no murmurs. There is a slurring of M-1. No dyspnea, cyanosis, or dema.

Respiratory System: Expansion equal. No areas of hyperresonance or impaired resonance. Breath sounds are B.V. throughout with no rales or other adventitious sounds.

Abdomen: Normal contour. No scarring, rigidity, or tenderness. Liver and spleen normal in size. No masses or other palpable evidence of pathology.

G.U.: Scrotum and contents normal. No penile pathology. No tenderness over the kidnesy to flat percussion. No bladder tenderness. Rectal: External hemorrhoids: No other pathology noted. Hernia: None.

M. & N.: See special report.

Bones and Joints: There is a bilateral Hallux Valgus which is more marked on the right. There

Defendant's Pre-Trial Exhibit No. 1—(Continued) is a bilateral pes planus, 2nd degree, symptomatic. There is a mild to moderate lordosis of the spine with about ¼ limitation of motion. There is a linear P.O. well healed scar i½ inches long along the lower [204] dorsal and upper lumbar vertebrae. There is considerable tenderness to gentle percussion over the lower dorsal and upper lumbar vertebrae.

Mahoney, William V. Hosp.Sub.Par. NSC WW 430 162 24511.

October 30, 1937

Diagnosis:

1. Wound, recent, incised and contused, occipitoparietal region of scalp, left —3127—3131
2. Psychosis, epileptic, deterioration —1398
3. Arthritis, chr., traumatic, dorsal & lumbar spine —3008
4. Fracture, lumbar vertebrae 1, 5, 17 dorsal, healed with fusion & ankylosis —3082
5. Cicatrix, P.O., spine —0285
6. Cicatrices, old, healed, traumatic, multiple, head and neck —0285
7. Chronic onjunctivitis —312
8. Deviated nasal septum —0417
9. Missing teeth —0023
10. Hallux Valgus, bilateral, more marked rt. —662

Defendant's Pre-Trial Exhibit No. 1—(Continued)

11. Pes Planus, 2nd degree, bilateral—0587
12. Hemorrhoids, external, mod. —705

W. E. MYERS, M.D.

Mahoney, William V. Hosp.Sub.Par. NSC WW 430 162 24511

Psychosis, Epileptic Deterioration

11/4/37

Statement: "I was down town last Friday, and felt a seizure coming on, so I turned around and started back home, but didn't get there. I woke up here in the hospital. You put me to bed, and I stayed till afternoon, then started home again. It was nice, and I thot I would walk. Down here on Terwilliger, I felt another spell coming. Tried to get off the highway, and when I came too was back in the hospital, and am here yet. I would like to go home. I always feel better outside. When these spells come on, I get off by myself and ward the severe attacks off, but if I am out in a crowd, they come on hard. Since I am here, I would like to have you put in a good word with my guardian. I need clothes and more money. He doesn't seem to see it that way, and it makes it very unpleasant for me," etc.

Examination: We saw this patient last Friday forenoon, October 29th. He had been placed on a bed in the Receiving Ward, and was somewhat confused following seizure. About 1 o'clock he reported to our office; said he was going out into the air and thot he would be all right. We saw no reason for his remaining, and let him go. About ½

Defendant's Pre-Trial Exhibit No. 1—(Continued) hour later he was brot back to the hospital, having had another seizure on the highway. He had traumatixed his scalp during first seizure, and during second seizure he had injured the same area more. [205] Surgical dressing was applied. He was given Luminal, gr 1½ BID. He has had no more seizures, and scalp wound has practically healed. He is an AWOL patient from American Lake. We previously diagnosed his case as Eiplepsy, with psychotic episodes. He is incompetent, and requires guardianship. Apparently between attacks he is capable of caring for himself in the ordinary environment. No reason for hospital treatment at this Facility is present at this time.

Diagnosis: 1398—Psychosis, Epileptic deterioration.

Recommendations: Discharge from hospital.

F. J. ERNEST,
Neuropsychiatrist.

Mahoney, Wm. 24511

Special Orthopedic Exam—Dr. J. R. Broun—Nov. 4, 1937:

Patient states that in 1918 a sack of potatoes fell on his back and he sustained a compound fracture of several vertebrae as a result of this injury. An emergency operation was performed the day of the injury. States that at present his back is weak and all movements involving the lower part of his back result in pain. Examination: Gait & Posture: He walks without any evidence of a lump.

Defendant's Pre-Trial Exhibit No. 1—(Continued) The dorsal spine has a moderate kyphosis, resulting in a marked postural defect. Examination of the spine reveals a vertical sop. scar well healed, over the lower dorsal and upper lumbar spine. This scar is 8 inches long and 1/3 inch in width. There is a marked kyphosis in the region of lower dorsal and 1st lumbar vertebrae. There is a scoliosis of the dorsal spine with the convexity to the right. All movements of the dorsal and lumbar spine are limited 60 gs. with subjective pain.

Impression: Scar, healed, P.O. over lower dorsal & upper lumbar spine; Fracture, old, healed, 12th thoracic & 1st lumbar & 5th lumbar with marked deformity and loss of bone structures and ankylosis of 1st lumbar & 12th dorsal.

Lumbo-dorsal scoliosis & kyphosis, marked; Limitation of motion, lumbar & dorsal spine; Arthritis, lumbar spine, traumatic, mod. severe.

Xray Dorsal & Lumbar Spine: Skull & Chest—
Dr. V. L. Minehart—

Nov. 3, 1937: All sinuses, sella and rest of skull normal. No shadow suggesting fracture detected. Trachea, heart, aorta, diaphragm and bony framework apperently normal. No shadows suggesting fracture detected. Lungs normal. Thoracic vertebrae: Slight lateral curvature of the lower half, convexity toward the right. The body of the last shows marked deformity, The lower third is deformed and a large bony hook is seen on its anterior edge. The entire body of the 1st lumbar is

Defendant's Pre-Trial Exhibit No. 1—(Continued) deformed. It is wedge-shaped, narrow portion anterior. Large bny hooks are seen on the anterior edges. The appearance suggests old compression fractures of both bodies, the 1st lumbar is the worst. The posterior arches of both are gone, apparently removed at operation. This includes the spines of both vertebrae. There is a very marked kyphosis at this level, convexity posterior. There is also a slight lateral curvature with convexity toward the right. The bodies of all of the lumbar vertebrae are separated at the anterior edges more than usual and the normal lumbar curve is increased. Bony deposits are seen about the posterior articulations of the last two, and the spine of the last is deformed, suggesting old fracture. Sacrum, sacro-iliac joints, hip joints and rest of pelvis normal.

[206]

Blood Count—10-29-37: RBC 4160,000; WBC 10,900; polys. 83-4 staffs; lymp. 14; mono. 2; eos. 1; Hb 76%.

Wass & Kahn neg. 11-2-37.

Urine—11-1-37; acid; 1021; occ.WBC.

Summary: Admitted October 29, 1937 for the emergency treatment of laceration of the scalp, sustained when he fell during an epileptic attack and struck his head on the pavement. Wounds were treated and are healing hapidly. Emergency treatment completed and patient has requested discharge.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Diagnosis:

1.	Wounds, recent, lacerated & contused, occipitoparietal region of scalp, left	3127—3131
2.	Psychosis, epileptic deterioration	1398
3.	Arthritis, chr. traum., dorsal & lumbar spine	3008
4.	Scars, healed, P.O. lower dorsal & upper lumbar regions	0285
5.	Fracture, old, healed, 12th dorsal & 1st & 5th lumbar vert.	0285
6.	with deformity & loss of bone structures.	0385—3082
	Ankylosis of 12th dorsal & 1st lumbar	0922—0106
7.	Scoliosis & kyphosis, lumbo-dorsal	0344—0346
8.	Limitation of motion, lumbar-dorsal spine	0106
9.	Scars, traum. mult. head & neck, old, healed	0285
10.	Conjunctivitis, chr.	0312
11.	Defiation nasal septum	0417
12.	Missing teeth	0023
13.	Hallux valgus, bilat., more marked right	0662
14.	Pes Planus, 2nd degree, bilat.	0587
15.	Hemorrhoids, external	0705

/s/ J. R. BROUN

M.D. Ward Surgeon

Defendant's Pre-Trial Exhibit No. 1—(Continued)
Approved and forwarded:

/s/ R. W. BRACE
M.D. Chief Medical Officer
Veterans Administration
Roseburg, Oregon
Admitted January 19, 1938

REPORT OF NEUROPSYCHIATRIC EXAMINATION (First Admission)

Name Mahoney, William V. SC-HOSP-WW C-430 162 Reg.#4915

Service, Rank and Organization: Pvt., Co 3, Serv. Bn. Army School.

Permanent Address 1728 S. W. Broadway, Portland, Oregon.

Religion Cath. Birthplace Flandreau, N. D. [207]

Date of Birth 4-11-96 Age 41

Sex M Race W Marital Status Married Occupation Bookkeeper.

Date of Enlistment July 13, 1917 Date of Discharge May 22, 1920.

Family History: (Information given by patient).

Father, Thomas, born in Ireland, died at 60, cause unknown; some surgical condition. Mother, Johanna McMahain, born in Minnesota, died at 65, cause unknown; Brother, Jack 47, living, well and married; Brother, Francis, 32, living, well and married; brother, James, 38, living, well and married.

Defendant's Pre-Trial Exhibit No. 1—(Continued)
Sister, Loretta, 45, living, well and married. Patient denies that any member of his family suffered from paralysis, seizures, insanity, nervousness, alcoholism, drug addiction or criminalism. States the home and family life has been always happy and that his father was a good provider.

Personal History:

Patient was born in South Dakota on April 11, 1896. He had measles as a child and mumps. Denies any illnesses or injuries in adult life save the present illness. Started school at 6 years, finished 8th grade, took a business course and then 2 years at University of Washington in commercial course as a trainee. Got along well in school. Enjoys drinking alcohol at times, but denies spree drinking. Never lost a job from drinking or received hospital treatment for it. Enjoys pool, billiards, golf, and baseball; likes to associate with his friends. Considers that he is easy to get along with. Does not hold grudges and is of a cheerful frame of mind. On May 20, 1930, not certain of the date, he married Clara Swenson. No children from this union. Considers the marriage as a happy and successful one.

Military History:

Enlisted July 13, 1917; was discharged May 22, 1920, Pvt., 3rd Co., Service Battalion, Army School. Got along in service with the officers and men. No AWOL or any general or summary court martial. Had flu in service and was treated at Field Hospital

Defendant's Pre-Trial Exhibit No. 1—(Continued)
#12. In France had his back broken (3 vertebra) as result of a pile of potatoes falling on him. Was treated with a laminectomy and was hospitalized in France, Grand Central Station, New York, Salt Lake City, Fort DesMoines, Iowa, and Fort Sheridan, Ill. for this condition, and discharged from service at Fort Sheridan, SCD.

Post-War History:

Industrial History:

Northern States Power Co., Minot, N. D., 1920 to 1923, Meter Reader, about $65. mo.

Business College, Portland, Oregon, 1923 to 1924, Vocational trainig.)

Univ. of Wash., Seattle, Washington,) Under
1924 to 1925, Vocational training.) Vets. Adm.

Olds, Wortman & King, Portland, Oregon, temporary from 1925 off and on, men's furnishing dept., $2.50 per day.

Previous hospitalization: St. Vincent's Hospital, Portland, Oregon, date unknown, seizures; Good Samaritan Hospital, Portland, Oregon, date unknown, seizures; Emergency Hospital, [208] Portland, Oregon, 2 or 3 times, date unknown, seizures; VAF, American Lake, Washington, 1930, 2 months, seizures; VAF, American Lake, Washington, 1933, 6 weeks or 2 months, seizures; VAF, Portland, Oregon, 2 or 3 seizures, one or tow days at a time; VAF, Roseburg, Oregon, 1-19-38.

Onset of present illness: About five years ago began having seizures. First one occurred at home.

Defendant's Pre-Trial Exhibit No. 1—(Continued)
Is not able to remember the circumstances under which the seizure occurred. Present complaints: The seizures he describes as falling unconscious and after a short period regaining partially his consciousness and then after a period of about 2 hours a full return of consciousness, together with a feeling of drowsiness and fatigue. States at times for two days he has a tired sensation in his legs and a loss of appetite, and just before a seizure will have a ringing in his ears. He has never suffered from incontinence or urine and feces. He does not bite his tongue. States the seizure may appear as many as 5 in a day and then may not have a seizure for 5 or 6 months. The last seizure occurred just prior to admission here. During that one he fell and broke his left clavicle, cut his head and discolored an eye.

Physical Examination:

Patient is a well developed and nourished white male weighing 151 pounds and 68½ inches tall. Hair, light brown with beginning baldness on the vertex. Eyes are blue. Several small scars on head. Recent scar left frontal region 1½ inches long, recent fracture left clavicle, deformity of lower left chest result of injury in service. Old P.O. scar from lower dorsal to lumbar region, the result of a laminectomy performed in service. Right great toe overrides first toe. The back appears to have its emotions intact. Part of the P.O. scar of the back is sensitive to touch. B.P. 120/90; pulse 84; temp.

Defendant's Pre-Trial Exhibit No. 1—(Continued)
98.8; resp. 16. Has no evidence of acute disease of the eyes, ears, nose or throat. Thryoid is not palpable, nor does it appear enlarged. There appears to be no disturbance in the lymphatic glands. The chest is symmetrical. Expansion good on both sides. There is no lagging. Lungs present no findings suggestive of disease. Heart sounds are clear. Heart does not appear to be enlarged. No murmurs. The rate is good. Abdomen is soft, flat and no findings to suggest the presence of pathology. Extremities are average in appearance ind examination.

X-ray Examination:

1-17-38—x-ray of left shoulder is normal, except the clavicle is deformed near the acromion.

Laboratory Examination:

Urinalysis is negative.

Neurological Examination:

Pupils react to light and accommodation. Extrinsic muscles of eyes are average. Tongue protrudes in midline, has its functions intact. The other cranial nerves appear to be average. The plantar and abdominal reflexes are absent in their response. The cremasterics are average. Left Achilles reflex is absent. The other deep reflexes are present and equal. There is no ataxia, no clonus, no disturbance in the Rhomberg position, no Babinskis, no atrophies or hypertrophies. [209]

Mental Examination: When the patient first entered this facility he was slightly confused and

Defendant's Pre-Trial Exhibit No. 1—(Continued)

had difficulty in finding his way about the ward. In the beginning he was slightly fault finding and exacting. After a few days he became more cooperative and pleasant and less confused. He will help at any O.T. ward assignment and does fairly well. He associates with the other patients. His letters have been pleasant and well constructed. There has been no depression or hyperactivity. Nor have there been any seizures. He has enjoyed the privilege of going on about the grounds unescorted. Orientation: Patient is well oriented for time, person, and place. General information: Is able to answer stock questions in an average manner. Has only a spattering knowledge of present day events. Mood: Are you happy or sad? "I feel happy, Doctor, as can be expected with our ups and downs." On the ward, the patient appears to be happy generally. He denies any hallucinations. Delusions: People treat him well. There have been no evidences of delusions. Recent Memory: Is able to give date of admission and to recall the articles of food that he has eaten in the past two days. Remote memory: Is poor. He has difficulty in remembering many dates and to place certain episodes in his life chronologically. Stream of talk: What would you like to do? "I would like to work. Something life office work, or store, work, but you know a fellow can't work with those seizures." His talk is coherent and relevant. He appears to have difficulty in calling up ideas at times. Attention is easily gained and held. Emo-

Defendant's Pre-Trial Exhibit No. 1—(Continued)
tional flow: Patient is slow in emotional expression. There appears to be no disassociation of the emotions. Retention is average; forms simple calculations slowly but correctly. The more complex calculation, for instance the 7 from 100 test, he does with great difficulty, making 7 erros. He answers the stock questions of good judgment correctly, but his general judgment is poor. Has partial insight into his condition. Does not believe there has been any change in his thinking or his memory or his ability to grasp new ideas.

Summary: The family history is essentially negative. Personal history—the patient had usual diseases of childhood and appears to have been in good health until he was injured in service, receiving a broken back, was treated by a laminectomy. He was discharged SCD. Believes he enjoyed fair health until 5 years ago when he began having periods of unconsciousness. Physical examination is essentially negative as are the neurological and laboratory examinations. At this time the patient complains only of seizures. Mentally, the patient shows difficulty with recent memory, has slowed up, has periods of confusion; stream of talk is coherent and relevant. Frequently some time is required before he can express an idea. No evidence of hallucinations or delusions. At times becomes irritable, fault finding and exacting. Shows difficulty in 7 from 100 test. Has little idea of current events. His emotional response is slow, but there is no disassociation of emotions or flatten-

Defendant's Pre-Trial Exhibit No. 1—(Continued)

ing. Judgment is poor. Has partial insight into his condition.

Staff Note: The patient was presented and during the examination he gave a fairly clear account of his epileptic seizures coming on without any warning, falling on several occasions and injuring himself [210] severely, more recently to the extent of fracturing the clavicle. He presents a marked irritable conversation following one of these epiletic seizures; he is insulting to others, but is more inclined to injure himself. The staff agreed upon the following diagnoses:

1398 Psychosis, epileptic, deterioration
0139 Arthritis, chr. traumatic, dorsal & lumbar spine
0593 Fracture, lumbar vert. 1,5,12 dorsal, healed w/fusion and ankylosis
0285 Cicagrix, P.O., spine

Remarks: This patient is considered by the members of this staff to be mentally incompetent and in need of continued hospitalization. His disability is considered to be permanent and total due to the nature and duration of same.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

Date Staffed: February 18, 1938
Presented by:
/s/ KENNETH W. KINNEY,
KENNETH W. KINNEY, M. D.
/s/ A. H. MOUNTFORD
A. H. MOUNTFORD, M. D.
Chairman
/s/ G. O. IRELAND
G. O. IRELAND, M. D.
Member
/s/ E. PETERSON
E. PETERSON, M. D.
Secretary

Typed 7-20-39 mjb

REPORT OF PHYSICAL EXAMINATION ON TSFR. TO ROSEBURG, OREGON

Date of admission: July 17, 1939

Date of transfer: July 20, 1939 C-430 162

Mahoney, William Vincent 1728 SW Broadway, Portland, Oregon.

Pvt. 3rd Co. Serv. Bat. Birthplace—Flandreau, S.Dak. April 11, 1896.

Personal History: Broken back, Nov. 11, 1918; Spileptic spells since about 1930; Repair of lacerations of scalp, Oct. 29, 1937;

Complaint on Admission: Patient was hospitalized at this facility last year at which time a diagnosis of psychosis, epileptic with deterioration, was made. Patient has frequently injured himself severely during his epileptic convulsions. Patient

Defendant's Pre-Trial Exhibit No. 1—(Continued) brought to hospital in a somewhat confused state with a history of having had an epileptic seizure during which he injured the right side of his face. He had been informed that his jaw was probably broken, and enters hospital for treatment of this condition. [211]

N.P. Exam. by Dr. F. J. Ernest—July 19, 1939: This patient was brought to hospital 9:00 AM July 17, 1939 badly bruised, left eye black, jaw fractured (left lower). Not conscious. Since entrance he has had seizures. Fairly clear between attacks. Has had no seizures for past 24 hours. This morning he is clear enough to explain about being in emergency hospital, allowed to leave at 6 AM July 17, 1939. He got as far as old postoffice and when next he knew he was back in emergency hospital. This is a deteriorated epileptic requiring care and treatment under N.P. supervision. He is now on trial visit since July 9, 1939. Diagnosis: 1398 Psychosis, epileptic, deterioration—Incompetent requiring guardianship. Recommend his return to Roseburg, V.A. Facility. While at this hospital he will require special supervision and enough luminol to control seizures. During the day he may get by under ward supervision. Treatment at night—a safety belt should be applied and he should have a low bed.

XRay Left Face—Dr. Minehart—July 18, 1939:

The left lower jaw is deformed at the angle. The appearance suggests recent, ununited fracture. The lower fragment is displaced downwards 8 mms.

Defendant's Pre-Trial Exhibit No. 1—(Continued)
A large molar is seen lying in the plane of fracture. On the other side impacted teeth are seen in the lower jaw. These films are poor because the patient was psychotic and therefore uncooperative.

7-17-39: WBC 6600; polys. 66-1 stab; lymp. 28; mono. 5; hb 88%; Wass & Kahn neg.

7-17-39: Urine, acid—1018; album & sug. neg; mucus 2 pl; WBC 1 pl; occ. sq. & rd cell epith.

Copy of Gen. Phys. Exam. Made on Admission Attached.

July 19, 1939

General Appearance: Well developed and well nourished ambulant white male.

Height: 68½ inches Average Weight: 141 pounds Present Weight:

Blood Pressure: S—118, D—88.

Head: Tenderness, swelling, and crepitation, at angle left mandible.

Eent: Pupils regular, equal, react to light. Hearing grossly normal. Ecchymosis about left eye subconjunctival hemorrhage. Deviated nasal septum.

Neck: No adenopathy. Thyroid gland not palpable.

Mouth: Teeth, many missing. Patient unable to open jaw very wide because of pain.

Chest & Lungs: Expansion good & equal. No rales. Normal vesicular breath sounds. Resonance normal throughout.

Heart: Normal position and size. PMI 5th interspace MCL. Sounds distant and metallic. No

Defendant's Pre-Trial Exhibit No. 1—(Continued)

murmurs, thrills, or arrhythmis. Peripheral arteries are not sclerotic.

Abdomen: Normal contour. No masses, tenderness, or rigidity. Kidneys, liver, and spleen not palpable. No scars.

GU: No varicocele, hydrocele, or hernia.

NP: See special report.

Joints: Moderate scoliosis and kyphosis of lower thoracic spine, with healed PO scar over lower thoracic vertebra.

Extremities: Bilateral Hallux Valgus; Weak feet, 2nd degree, bilat.

Anus: External hemorrhoids.

Skin: Contusions on hips, knees and trunk.

Note Dr. Ernest's recommendations.

Diagnosis:

1. Psychosis, epileptic deterioration..... 1398
2. Nephritis, parenchymatous, chr., history 1063

[212]

3. Fracture of mandible..... 3082
4. Ecchymosis, left lid..... 0465
5. Subconjunctival hemorrhade, left..... 0699
6. Arthritis, chr., traumatic, old, dorsal & lumbar spine 3008
7. Scars, healed, PO, dorsal & lumbar spine 0285
8. Fracture, old, healed, 12th dorsal and 1st and 5th lumbar vertebrae..... 3072

Defendant's Pre-Trial Exhibit No. 1—(Continued)

9. Ankylosis, 12th dorsal & 1st lumbar vertebrae 0106
10. Scoliosis & kyphosis, lumbo-dorsal spine 0346
11. External hemorrhoids 0705
12. Deviated nasal septum..... 0417
13. Hallux valgus 0662
14. Weak feet 0587
15. Missing teeth 0023

H. ROSOW, M. D.

Mahoney, William V NSC WW 430 162 28616

Findings by Dentist—Compound fracture of left mandible in region of lower left third molar. The third molar is very loose and attached only by mucous membrane and irritates the patient. Treatment: The treatment of this fracture will require inter-maxillary wiring for a period of six weeks and possibly it will be necessary to place a vitallium screw in the ramus with traction to a skull cap.

Summary: This patient was admitted to this hospital with a fractured jaw, which he sustained during an epileptic seizure. Patient has marked mental deterioration, and is being transferred to Roseburg at the recommendation of the NP Consultant.

Diagnosis: Same as directly above.

/s/ H. ROSOW

H. ROSOW, M.D. Ward Surgeon

Defendant's Pre-Trial Exhibit No. 1—(Continued)
Approved and forwarded:

/s/ R. W. BRACE
R. W. BRACE, M.D. Chief Medical Officer

Veterans Administration
Roseburg Oregon

DISCHARGE SUMMARY

Name: Mahoney, William V. C-430,162 Hospital Reg.#: 4915.

Date Admitted: January 19, 1938.

Permanent address: 1728 S. W. Broadway, Portland, Oregon.

Nearest relative: Wife, above address.

Military History: Enl. July 13, 1917 Disch. May 22, 1920 Pvt. Co. 3, Serv. Bn. Army School.

[213]

This patient was admitted January 19, 1938. At the time of admission, he was transferred to the infirmary ward for treatment of fracture of the clavicle, which eh had received during an epileptic seizure prior to admission. Improvement was satisfactory and he made a fairly satisfactory hospital adjustment. February 23, 1938, he attempted to elope. Following this, he improved, denied elopement ideas and on March 22, 1938, was granted parole. April 2, 1938, did not return from a town pass. April 28, 1938, returned unaccompanied and parole was restored July 2, 1938. July 16, 1938, again eloped but was apprehended and returned to the hospital. Following this was rather unco-

Defendant's Pre-Trial Exhibit No. 1—(Continued) operative and irritable. August 22, 1938, developed a phimosis and a dorsal split of the penis was made by the Consultant Surgeon. He also developed skin lesions, and was placed in isolation. On October 21, 1938, his blood Wassermann was four plus. October 19, 1938 Wassermann and Kahn: Positive, four plus. January 18, 1939: Wassermann negative, Kahn four plus. May 10, 1939: Wassermann negative, Kahn 3 plus.

Anti-luetic treatment was started. Patient reacted to neosalvarsan, and for this reason treatments were limited to tryparsamide and thiobiamol. On April 9, 1939, again on parole and eloped June 10, 1939. Placed on leave of absence status until July 10, 1939. Status changed to trial visit on July 21, 1939. He returned unaccompanied, complaining of pain of his mandible. X-ray revealed a fracture of the right mandible.

X-ray Report July 21, 1939: Examination of the facial bones and both mandibles shows a fracture of the left zygomatic arch at the anterior end and mid-portion without separation or displacement. There is a semi-oblique fracture of the right mandible extending from the region of the third molar backward to the angle of the jaw. The anterior fragment shows slight downward and outward displacement. Reexamination after a wire splint had been applied to the teeth shows the jaws to be worse. The anterior fragment is displaced downward approximately one-fourth inch and inward the same distance with slight over-riding.

Defendant's Pre-Trial Exhibit No. 1—(Continued)

X-ray Report August 7, 1939: Examination of the mandible shows the fracture at the angle of the left mandible to be in good position and apposition. The fractured edges are not as clear cut and distinct and show evidence of beginning union.

X-ray Report August 24, 1939: Reexamination of the left mandible shows the anterior fragment displaced downward and backward approximately ½ cm. There is evidence of union but so far there is very little bone callus.

X-ray Report September 13, 1939: Reexamination of the right mandible shows no change in position. The anterior fragment is displaced downward approximately one-half cm. The lower half of the fragments appear to be in good contact but there is slight separation in the upper portion due to a slight inward displacement of the anterior fragment and a slight inward rotation of the upper portion of the distal fragment. There is some periostitis reaction along the lower border of both fragments, extending for a distance of three-fourths inch on either side of the line of fracture. The line of fracture is not as apparent as previously seen and there appears to be fairly good bone union in the lower half.

X-ray Report October 27, 1939: Reexamination shows no change in the position of the fragments. There appears to be good union at the lower end of the line of fracture. There is still slight separation and lack of union in the upper half inch, although this appears to be filling in. [214]

Defendant's Pre-Trial Exhibit No. 1—(Continued)

X-ray Report February 7, 1940: Reexamination of the left mandible shows no change in the position of the bone. The edges of the fracture are smooth and rounded. There appears to be union in the middle portion but the upper third of the line of fracture does not show any evidence of bone union.

Union of this fracture was rather unsatisfactory, as shown by a review of the various x-ray examination. The patient made a fairly satisfactory adjustment and was returned to the parole ward. June 27, 1940 again eloped. Elopement status was changed to leave of absence on July 2, 1940. August 1, 1940, changed to trial visit status and discharged August 1, 1941, at expiration of trial visit.

During this hospitalization received phenobarbital regularly in treatment of epilepsy. Also received 17 three gm. and 1 one and a half gm. doses of tryparsamide intravenously and 21 2/10 gm. thiobiamol instramuscularly.

Diagnoses:

1. 1398 Psychosis epileptic deterioration treated, unimproved
2. 0139 Arthritis, chr. traumatic, dorsal and lumbar spine untreated, unimproved
3. 3082 Fracture, lumbar vertebrae, 1, 5, 12, dorsal healed, with fusion and ankylosis
4. 0285 Cicatrix, P.O. spine untreated, unimproved.
5. 1644 Syphilis, tertiary treated, improved

Defendant's Pre-Trial Exhibit No. 1—(Continued)

6. 3082 Fracture, right mandible treated, improved
7. 0023 Missing teeth untreated, unimproved
8. 0630 Gingivitis, far advanced treated, improved

/s/ CLARENCE E. JUMP
CLARENCE E. JUMP M.D.
/s/ KENNETH W. KINNEY
KENNETH W. KINNEY M.D.
/s/ M. L. UNDERWOOD
M. L. UNDERWOOD M.D.

Approved:

/s/ W. E. FUTRELLE
W. E. FUTRELLE M.D.
Chief Medical Officer [215]

Mr. Meindl: We now call Dr. Evans.

JOHN C. EVANS

was thereupon produced as a witness in behalf of the plaintiff herein, and, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Meindl:

Q. Would you state your name, please, Doctor?
A. John C. Evans.
Q. And where do you live, Doctor?
A. At the State Hospital at Salem.
Q. And what is your profession?

(Testimony of John C. Evans.)

A. Practicing medicine.

Q. Are you licensed to practice medicine in the State of Oregon, Doctor? A. I am.

Q. And how long have you been so licensed?

A. Thirty-six years.

Q. From what school or schools are you a graduate? A. University of Oregon.

Q. Medical School, Doctor?

A. That is right.

Q. And when were you graduated?

A. 1906.

Q. And you have specialized in any branch of your profession?

A. Psychiatric—mental and nervous diseases.

Q. And how long have you so specialized?

A. Over thirty-six years.

Q. Are you connected with any institution at the present time, Doctor? A. Yes.

Q. Which one?

A. The Oregon State Hospital at Salem.

Q. And in what capacity, Doctor?

A. Superintendent. [216]

Q. How long have you been the superintendent of the Oregon State Hospital at Salem?

A. Since July 1, 1937.

Q. You succeeded Dr. Steiner then?

A. That is right.

Q. And how long have you been connected with the Oregon State Hospital?

A. Since April 15, 1906.

(Testimony of John C. Evans.)

Mr. Meindl: May I have Pre-trial Exhibit No. 10?

Q. Doctor, have you ever had the occasion to examine William V. Mahoney, the insured in this case, sitting here at the counsel table?

A. Yes.

Q. Doctor, I will hand to you Pre-Trial Exhibit No. 10 and ask you what this record is.

A. This is the State Hospital record of William Mahoney.

Q. Is that the insured in this case, Doctor?

A. How is that?

Q. Is that the veteran sitting here at the counsel table?

A. I beg your pardon; I have a cold in my head and my hearing is very bad today.

Q. Is that the record of William V. Mahoney sitting here, Doctor? A. Yes.

Q. When did you examine him?

A. I examined him on March 10, 1934.

Q. What did you find his condition to be at the time you examined him?

Mr. Dillon: I object, your Honor, unless it be shown that he is testifying from memory—refreshing his memory or testifying as to his recollection, independent of the records.

The Court: Yes, I think you should ask him what he was doing.

Q. (By Mr. Meindl) Doctor, do you need these records in order [217] to tell what his condition was at the time you examined him?

(Testimony of John C. Evans.)

A. Yes, the record indicates that his mental diagnosis was that of epileptic deterioration.

Mr. Dillon: I object, your Honor, as not a direct answer to the question.

The Court: That is true, he did not answer directly, but this is direct examination.

Mr. Dillon: If he wants to refresh himself, that is what I want to know, your Honor.

The Court: Well, I take it he is refreshing his memory.

Q. (By Mr. Meindl): You are refreshing your memory by looking at your own records? Is that correct, Doctor?

A. That is right. I wanted to be sure.

Q. What was your finding at the time you examined him in March of 1934?

A. That is right, March 10, 1934.

Q. And what was the matter with Mr. Mahoney at that time?

A. I thought he was suffering from epilepsy with deterioration.

Q. What was your diagnosis, Doctor?

A. That was it, epileptic deterioration.

Q. What do you mean by epileptic deterioration?

A. Well, epilepsy is a disease of the central nervous system characterized by particularly what is commonly known as fits or convulsions, and the first time I saw him, which led to my suspicion that he might be suffering from epilepsy, his tongue

(Testimony of John C. Evans.)

was badly bitten, which oftentimes takes place during a seizure, and that, along with the history that he supplied me, gave me the opinion upon which I based my diagnosis, which later on proved to be true.

Q. What was that history, Doctor?

A. Shall I read it?

Q. Yes.

A. "Age 37, married. Occupation, bookkeeper. Residence, Port- [218] land. Physical health fairly good. His tongue is bitten on both sides and anteriorly. Patient states that he suffered a dislocated and broken back while in France during the Armistice. Claims that this injury gives him no trouble at the present moment. However, he is drawing compensation at the rate of $45 per month. Commitment claims he drinks moderately and is suicidal. Recently tried to jump off the bridge into the river, particularly to avoid someone whom he thought was after him. Has delusions of persecution. Imagines someone is trying to kill him. Delusions changeable. Hallucinations of hearing and sight, is restless and depressed. There is a question of epilepsy in his case. This morning patient exhibited a badly bitten tongue and gave the history that recently he thought a certain policeman was framing him, put up a gag upon him and got his name mixed into it and took a very serious dislike to him. Says there was no reason for this, but the policeman attacked him upon the bridge and was going to throw him into the river. In fact,

(Testimony of John C. Evans.)

when the bitten tongue was discovered, epilepsy was at once suspected and the patient admits that he had his first spell about ten years ago and has had many convulsions since that time, that he has them about once a month and sometimes he will have two or three spells in short order. In fact, he was somewhat dazed and it was impossible for him to give a dependable history this morning", and my diagnosis at that time was epileptic deterioration.

Q. Doctor, would you define epileptic deterioration, what that means?

A. Yes, it is, as I started to describe it a bit ago, a disease affecting the central nervous system, and the outstanding symptom or manifestation of that disease is the typical convulsion, and along with that these patients undergo a change of character, they are different than they formerly were, [219] they are more or less irritable and hard to get along with ordinarily. It depends upon the severity of the disease. There are severe cases and mild cases, and in the severe cases they become more or less impaired in mind to the degree they are unable to put out the brain work they formerly did; in other words they become impaired in various manners. I believe that is a short boiled-down description of epileptic deterioration.

Q. Was Mr. Mahoney sane or insane at the time of your examination?

A. I would consider that he was insane, mentally sick.

(Testimony of John C. Evans.)

Q. Doctor, with regard to the convulsions, what happens at a convulsion? Is it a falling? Could you explain a convulsion in an epileptic case?

A. Well, the typical convulsion is characterized by—perhaps the patient himself will have a premonition that they don't feel right, they may have some sensation, and suddenly they may utter a cry and if they are standing they will fall. It is a complete and sudden loss of consciousness. They are rigid and hold their breath until sometimes they become black in the face, you might call it. That lasts from perhaps a half to a minute, and then they start in with clonic, jerking movements of the arms and legs and stertorous breathing, and they may pass urine involuntarily during that time, and finally the clonic convulsion ceases and they are relaxed, and eventually they will rouse themselves, but they are stupid, confused, and they are not too clear in mind, and that period is anywheres from a few minutes to maybe an hour or so. The ordinary case clears up mentally to where they can get around and know what it is all about in from fifteen to thirty minutes. Sometimes they will have a convulsion and come out of it and never have knowledge at all of ever having had one. That is the typical epileptic seizure. [220]

Q. Is there a seizure where a person does not fall and does not appear in that state that you have described, Doctor?

A. Yes, we have a type of epilepsy known as a psychic. They have all of the symptoms of epi-

(Testimony of John C. Evans.)

lepsy devoid of the convulsion itself. What I mean is, they don't fall down and convulse, but they may be out momentarily. They will be unconscious. For instance, as an example, a fellow suffering from a mild form may be sitting at a table eating, suddenly he will cease his conversation or cease feeding himself for a few seconds and then start to feed himself and take up the conversation where he left off. That is a very mild type of what we call petit mal or mild epilepsy, not as severe as the common epilepsy that everybody knows about.

Q. Doctor, assume that an individual entered the United States Army on July 15, 1917 and while in the Army was hospitalized for seventeen days in February of 1918, also hospitalized in March of 1918, and then on November 11, 1918 was hit on the head by three sacks of potatoes in France, resulting in a crushing fracture of the twelfth dorsal and first and second lumbar vertebrae, that that individual was put in a camp hospital in France and remained there until December 31, 1918, when he was transferred to a hospital center in France where he remained until April 1, 1919, from there transferred to Base Hospital No. 69 in France where he remained until May 14, 1919 and was then transferred to the embarcation hospital in New York, where he remained until May 25, 1919 and then was transferred to the United States Army General Hospital, Fort Des Moines, Iowa, where he remained until August 20, 1919, and then was transferred to the U. S. Army General Hospital at

(Testimony of John C. Evans.)

Fort Sheridan, where he remained until his discharge from the Army on May 22, 1920, but that in January of 1920 he was out of the hospital on a furlough for a few weeks, and assume further, Doctor, that this individual appeared normal mentally and [221] physically, worked prior to going into the Army at hard labor mixing mortar, and so forth, but upon his return and being discharged from the Army the following things were noticed about this individual, that he imagined everybody was—or strike that; that these things were noticed at the time of his furlough in January of 1920, that he imagined everybody was bothering him, that somebody was after him, his conversation was rambling, he would talk about one subject and switch over to something else, could not make head or tail of his conversation, he would sit and stare, didn't seem to want to talk to anyone, had a vacant stare, felt people were against him, he was very nervous, that a year following his discharge he was awfully nervous, not the same as he was before his service, he was in a changed manner, he acted funny and nervous, he was irritable to the point of being unpleasant, his conversation was rambling, he would talk about one subject and change to another, he kept to himself and was suspicious of people. Assume further, Doctor, that this individual was employed at a power company reading meters part of the month and office boy the other part, but he was known at this employment by the nickname of "Dizzy", you would go and look for him and find

(Testimony of John C. Evans.)

him in some out of the way place amusing himself by either looking out the window or playing with some small object in his hand such as an eraser, that he was peculiar, that he didn't associate with his fellow employees and would sit with a blank expression on his face, he was a loner, you would find him staring out of the window or staring into space, he would take prejudice against certain people and other employees, that he was hired and kept because of sympathy and employed by an individual who was active in the American Legion. Assume further Doctor, that the main symptoms that were mentioned in this hypothetical question following his discharge and at the time of his furlough were noticed in the [222] years on through, not particularly any apparent change, would you have an opinion as to whether or not this man's mind was unsettled as of the time of his discharge from the Army? I should also ask, Doctor, take into consideration that this individual was in the same condition in 1934 as you found William V. Mahoney to be at the time you examined him. Would you have an opinion as to what if anything this man was suffering from at the time of his discharge from the Army in 1920?

Mr. Dillon: I object to the question, your Honor, first for the reason that the history of hospitalization given is simply a series of dates and not any information as to the diseases from which he was suffering during that period; second, on the grounds that facts have been included that are not accu-

(Testimony of John C. Evans.)

rate, for instance, that he was irritable to the state of being unpleasant when the testimony is to the contrary; the witness said, "no, not unpleasant"; also on the grounds that there is no testimony to the fact that symptoms narrated as at the time of discharge and the year after continued excessively throughout to the year 1934, but on the other hand, as I recall it, the only evidence is '24, '27, and '33, also on the ground that the question is wrong in embodying alleged facts that are supposed to have been narrated in keeping with the facts narrated from history only in Dr. Evans' examination of 1934.

The Court: The objection is overruled. There is no proper objection to a question asked hypothetically that there are certain elements of it that mean nothing. The mere fact that no data is given regarding hospitalization might or might not mean anything. If the witness thinks that that factor has not probative value he can given it no weight in the opinion. If he thinks it has value he probably will. The further factors that are mentioned are not proper objections to this type of a question because the examiner can ask the Doctor any ques-
[233] tion he wants to. You can argue to the jury that it is improperly founded and there is no evidence to base it on, but he can ask any kind of a hypothetical question. He is not bound to put in the things that are in evidence or not in evidence. You can develop subsequently by your cross-exami-

(Testimony of John C. Evans.)

nation or in your argument that there is no such factor as the basis of the hypothetical question. The only thing that the Court is responsible for is that the hypothetical question in general is fair, and I think this one is fair. You may answer.

Q. (By Mr. Meindl): Would you like to have the last part of the question, Doctor?

A. Am I to answer the question you propounded?

Q. Yes.

A. Assuming that all those statements are matters of fact it would be my opinion that certainly there was something radically wrong with Mahoney's mind; there would have to be in my opinion.

Q. Well, Doctor, assuming these facts to be all true and assume further from what you found in 1934, this accident happening November 11, 1918, but giving your opinion as of May 22, 1920, eighteen months later at the time he was discharged, was he in your opinion sane or insane at the time he was discharged in May of 1920?

A. That is most difficult for me to answer and be positive. My personal opinion of Mahoney's case is that his entire trouble was an end result of the head injury or injury to the central nervous system he received on November 11, 1918. I would put it this way, that had that injury not occurred he would not have had his epilepsy, and I don't believe that any man is wise enough to say that even adopting the accident that took place, accepting that as a matter of fact, I don't believe anyone is wise

(Testimony of John C. Evans.)

enough to say just when the mental involvement did actually start. I am not wise enough to say that yes- [224] terday the man was well but today he is mentally sick, but believing his entire trouble was due to the injury as just related I am inclined to believe that——

Mr. Dillon (Interrupting): We object, your Honor, to any inclination the Doctor has.

The Court: Overruled. He is testifying as an expert. He can give his opinion.

Mr. Dillon: May he give his inclination also, your Honor?

The Court: Yes, that is an opinion.

A. (Continuing): I was trying to put over this fact as I see it. Based upon my years of experience with head injuries and epilepsy it is my opinion that his impaired state of mind must have started perhaps within a few months following this head injury. That has been my experience, but I can't say whether it was the first two weeks or the first two months or a year, but I believe it was during that period. My experience leads me to that conclusion.

Q. (By Mr. Meindl): Well, Doctor, the discharge from the Army was in May of 1920 and the injury was November 11, 1918, and assuming further the changes in personality, would you have an opinion as to what the condition was in May of 1920, eighteen months after the injury?

A. That is most difficult to formulate an opinion upon a question of that sort. After all, it is an opinion.

(Testimony of John C. Evans.)

Q. Well, your best opinion, Doctor.

A. I am basing my opinion upon my experience in head injuries and it is reasonable in my mind to assume that his mental symptoms certainly must have started prior to 1920. I may be mistaken on that. That is simply an opinion.

Q. Doctor, assuming these facts again, then what is your best opinion as to whether or not this individual was sane or insane on May 22, 1920 at the time he was discharged from the Army? [225]

A. Again that is most difficult. You know, there is a difference between being deteriorated in mind and having a psychosis or being insane. What I mean by that is this, that a person can be deteriorated and not having a psychosis, and yet they can be deteriorated and have a psychosis. To clarify that further, I might cite you the case of an old man that is suffering from senile dementia. That is an organic condition due to the wear and tear on the brain cells. He becomes forgetful and he also undergoes a change of character. He does things that he didn't formerly do ten or twenty years ago, but he does not suffer from a psychosis. So in the case of William Mahoney. On May 22, 1920 he might have had some deterioration and at the same time not be frankly insane or frankly psychotic. It is impossible for me to say.

Q. Doctor, assuming that same state of facts again, how many years prior to your examination in 1934 would you give an opinion as to his insanity?

(Testimony of John C. Evans.)

I believe you testified he was insane at the time of your examination.

A. I believe he was deteriorated for some considerable period prior to the time I examined him, but whether or not he was frankly insane back in 1920 or along about that time I can't say for sure. I don't know; but I do believe he was deteriorated. I think his brain was injured, that is the idea, and that fine distinction—I might add this, that if one had to choose between being frankly psychotic or to be deteriorated in mind the deterioration is much more harmful and much more permanent in character probably than some of the functional conditions known as being psychotic or insane.

Q. Is that a mental illness, being deteriorated?

A. Yes, it is a type of mental illness, but it is not psychotic. That is a functional thing. Some cases that are psychotic are curable, but when they are deteriorated they never get well. That is the point that I was bringing out, and I can't say just the date—I am not wise enough to know just when this [226] man was frankly psychotic. I can't say.

Q. Doctor, could you give an opinion as to five or ten years before the date of your examination as to that?

Mr. McGan: I object to that, your Honor, as repetitious. The Doctor has testified that he cannot give an opinion when this happened.

The Court: The objection is sustained.

Q. (By Mr. Meindl): Doctor, could you give

(Testimony of John C. Evans.)

an opinion as to about how long after this injury on November 11, 1918 this assumed individual did become mentally sick?

Mr. McGan: The same objection, your Honor.

The Court: I think the Doctor has answered that.

Mr. Meindl: Your Honor, may I be heard on that, your Honor? If your Honor please, the question has been confined to the date of May 22, 1920.

Mr. Dillon: Your Honor, he specifically asked with regard to 1931 too.

Mr. Meindl: Your Honor, I didn't.

The Court: I think the question has been answered, but you may ask it again, however.

Q. (By Mr. Meindl): Doctor, will you give us your best opinion as to how soon after this injury, assuming this same state of facts and also taking into consideration your own findings in 1934—how soon after this injury in 1918, how many years—your best opinion—did this man become insane? We are just asking your best opinion on that, Doctor.

A. It is almost impossible to approximate the date. I would say the best evidence and the surest or best answer to that would be answered by people who knew this man, who associated with him and saw these changes of personality. I think that would be much more valuable than the opinion of any so-called expert.

The Court: The answer is stricken. [227]

Q. (By Mr. Meindl): Doctor, assuming a change of personality were noted in January of

(Testimony of John C. Evans.)

1920 and also at the time of discharge in the summer of 1920, then would you have an opinion as to when the insanity arose?

Mr. McGan: I object to that, your Honor, as repetitious.

The Court: I understand the Doctor is saying that he has no opinion.

Q. (By Mr. Meindl): Doctor, did you hear these depositions read this afternoon?

A. I did, but I couldn't understand all of them; your voices were so low that I missed out on quite a lot of it.

Q. Doctor, would you have an opinion as to whether or not the assumed individual was insane in the year 1925, seven years after the injury?

Mr. McGan: If the Court please, I object to that as repetitious.

The Court: No, he may answer this one. I will find out about it. He may answer.

A. In answering that question I would have to assume the hypothetical question was true, those facts as you recited them and my examination of him in 1934, and I say it is my opinion that he was impaired in mind at that time, but whether he was frankly psychotic or not I can't say. I think he was deteriorated at that time, yes, but there is that distinction between a functional thing and permanent deterioration. I contend that he was deteriorated from an early date, but whether he was frankly psychotic in 1925 would be a wild guess on my part. I don't know.

(Testimony of John C. Evans.)

Q. (By Mr. Meindl): Well, Doctor, assume at a later date, the year 1930, which would be twelve years after the injury and just four years prior to your examination. Would you have an opinion on that date?

Mr. McGan: The same objection, and the further objection, [228] your Honor, that this invades the province of the jury.

The Court: No, he may answer if he has an opinion.

A. Again I will have to answer this last question the same as I did the one prior. I don't know.

Q. (By Mr. Meindl): Doctor, assume that the individual appeared the same and acted the same back in 1920 as he does at the present time, then would you have an opinion?

A. I would say that the changing personality, that he was a different man than he was formerly, leads me to conclude that for several years prior to the time that I examined him he was deteriorated and impaired in mind, but I am not wise enough to say when he had these delusions of persecution—when those things started in I don't know, and if you would ask me the question as to whether or not I *though* he was insane in 1933, again I don't know. It is a matter of opinion, and if I answered it I would have to guess. I am basing my answers on my experience in head injury cases. I am contending all along the man was injured mentally, that some damage certainly was done him, or he

(Testimony of John C. Evans.)

would not have developed this condition from which he still suffers, but whether he was frankly insane or not in those earlier years I just can't say.

Q. Doctor, you understand in answering a question you assume all these things as being true, do you not, Doctor, and give your opinion based upon that?

A. Well, I am saying that assuming these things were all true he certainly was impaired in mind and the mental damage was done him and that he was deteriorated, but whether he was frankly psycotic or not—I can't tell you the beginning of that. I don't know.

Q. Did you have occasion to see Mr. Mahoney today, Doctor? A. Yes, I did.

Q. Do you have an opinion as to whether or not his condition is permanent? [229]

Mr. Dillon: I object to that, your Honor, as not determining any question in the case.

Mr. Meindl: I will reframe the question—whether or not there is any hope for cure.

Mr. Dillon: That is practically stating the definition of permanent, your Honor.

The Court: He may answer.

A. Reviewing his past history and the injury and the condition that I found Mahoney in in 1934 and the condition I saw him in this afternoon I would say that there is no chance of cure. I think his trouble is permanent.

Mr. Meindl: You may cross-examine.

(Testimony of John C. Evans.)

Cross-Examination

By Mr. Dillon:

Q. Doctor, as I understand this is the first time you examined Mr. Mahoney since 1934?

A. That is right. This is the first time I have seen him since that time.

Q. And you made a preliminary diagnosis on March 10, 1934, did you not?

A. I believe that was the date.

Q. And is there not a later one in these files? Has that been called to your attention?

A. There may be. I believe I did a special examination for the Veterans Bureau, and if I recall it was the same diagnosis, practically.

Q. On March 10 you stated, as I see here, that the history given at that time was not dependable. What was the tentative diagnosis made then based on?

A. It was based necessarily on what I found, his bitten tongue and what he told me himself and what was contained in the commitment papers of the examining physician who had him [230] examined at the time of commitment. I based my opinion upon that.

Q. Did you not also base your opinion, as the records indicate, mainly on the history given to you by the wife of Mr. Mahoney?

A. I don't recall that.

Q. But you would have had before you, would not you, that portion of his exhibit signed by Mrs.

(Testimony of John C. Evans.)

Mahoney in which the history is set out in great detail?

A. Naturally we would consider that.

Q. Do you recall, Doctor, whether this condition improved or not while he was under your care and treatment? Did you not hear my question, Doctor? A. I did not.

Q. I beg your pardon. I will try to speak louder. Did Mr. Mahoney's condition materially improve while under your treatment and care?

A. Yes, he grew better.

Q. Doctor, taking up the question of epilepsy, is it not true that some of the leading and most intelligent citizens of the United States are unfortunately afflicted with epilepsy?

A. That is true, but not traumatic epilepsy.

Q. Is it not true, Doctor, that traumatic epilepsy begins within a comparatively short time after the trauma by the blow?

A. No, just the opposite is true. I have had a lot of experience with State Industrial Accident people, and in the old days when I was making their examinations they would close a head injury case against my judgment, and in two or three years following the injury they would have convulsions. That has been my experience.

Q. Is that the general accepted theory of medicine on that subject?

Mr. Bynon: That is objected to, your Honor, as improper [231] examination.

The Court: He is testifying as an expert and

(Testimony of John C. Evans.)

counsel has a right to ask him a question of that sort.

A. Of course doctors differ in their opinion somewhat, but I was basing my answer upon my own personal experience.

Q. Doctor, I notice in your last report—I am asking you if you remember it—that the patient completely cleared up mentally, is able to cooperate very well, is up and about, doing some chores about the hospital premises and is improving both mentally and physically. A. Yes.

Q. Doctor, is it not a fact that even when a person has epilepsy it does not follow necessarily that the brain is affected to a great degree?

A. It all depends on the case, of course.

Q. If a man, Doctor, has epileptic convulsions or seizures of not an extended period of time and they occur only three or four times a year his brain and mental functions would only be affected, would they not, during that short period while he was in the convulsions and the period following for some little time until he came out of it?

A. Again I must say it depends on the case. In the case of the man in question, and realizing that it is due to a head injury, that is, traumatic epilepsy, these convulsions are a sort of a symptom of the underlying condition, which may be very, very infrequent but does not particularly lessen the severity of his real trouble. However, as you have put it, a man who has more frequency and

(Testimony of John C. Evans.)

more severe convulsions is apt to become more deteriorated than a fellow who has them very infrequently; that is very true.

Q. Did Mr. Mahoney in 1934 while at Salem have any epileptic seizure?

A. Not to my knowledge. [232]

Q. Doctor, I understand you to say that from the symptoms narrated to you in the hypothetical question presented to you that there was mental deterioration ever since the accident Mr. Mahoney experienced. Would you be kind enough to tell me what symptoms were narrated to form a basis for that opinion?

A. I believe you misunderstood me. I did not wish to convey the idea that he was deteriorated right from the start, but the deterioration was an end result of his change of character, and so forth, that was read to me in the hypothetical question.

Q. Doctor, wouldn't those things narrated in the hypothetical question be more naturally attributed to the physical suffering that Mr. Mahoney had undergone?

A. That might aggravate his change of character, that is true.

Q. One suffering as he must have been with his injury, it would not be abnormal for a man to be irritable, would it?

A. No, that is true, but all of the symptoms enumerated in the hypothetical question put to me indicate brain damage as an end result of that

(Testimony of John C. Evans.)

injury. You can't just point out irritability as one symptom.

Q. What were the other symptoms, Doctor? I asked you that before we seemed to get off. I mean, Doctor, taking the symptoms narrated in the hypothetical question as if they were true, what symptoms aside from irritability and nervousness were of any consequence in that respect?

A. Well, I think the hypothetical question set forth the fact that he had undergone character changes characterized by staring out the window and he didn't want to associate with others, and when he was on a certain job or doing certain work he was undependable and played with articles, and things of that sort. There was a number of them. I don't recall them all, but the hypothetical question speaks for itself. Those, in addition to the irritability, made me conclude that [233] they were some evidence of a disorder of the brain as an end result of the injury.

Q. Would those symptoms taken as whole, that he is found playing with an eraser at one time, that he would occasionally go down stairs to get sympathy from a fellow legionnaire, and when he wasn't working a half dozen times maybe—it isn't specific; he was looking out the window—do you feel now as a neuropsychiatric expert that those are sufficient symptoms on which to base even a diagnosis of some deterioration mentally?

A. I think so, yes.

(Testimony of John C. Evans.)

Q. All right, Doctor. May I have Defendant's Exhibit No. 1, placed in evidence by plaintiff? Doctor, if I tell you that Mr. Mahoney was examined by physicians on April 9, 1921, May 3, 1921, August 18, 1921, January 17, 1923, January 18, 1924, April 28, 1924, February 11, 1925, April 16, 1926, October 4, 1932, and June 10, 1934, and the findings do not show any indications of mental trouble, would or would not that change the opinion you last gave?

Mr. Meindl: If your Honor please, we object. Counsel is trying to ask this witness to base his opinions upon the opinions of others.

Mr. Dillon: I am not giving the diagnosis. If it is necessary I shall be glad to read the findings from every examination. I was trying to save time.

The Court: Well, as I understand it, it is improper to ask an expert witness his opinion based on the findings of other doctors. You can ask him his opinion about certain facts.

Mr. Dillon: Your Honor, that is the rule in the Ninth Circuit. I thought I was obviating it by not making a diagnosis out of it. Two other circuits have differed, but it is still the Ninth Circuit rule. If your Honor thinks I [234] should read the findings I shall read them.

The Court: Well, I will sustain the objection in its present form.

Q. (By Mr. Dillon) In the examination of April 9, 1921 made at Minot, North Dakota the findings are: "1st l. r. molar missing. Some teeth

(Testimony of John C. Evans.)

decayed. Varicose veins slight bilateral. Chest negative. Stiffness of spine. X-ray of spine shows slight displacement between 11th and 12th dorsal vertebra and fracture of 12th dorsal 1st and 2nd lumbar vertebra." Examination of August 8, 1921——

Mr. Bynon: (Interrupting) If your Honor please, it seems to me the objection Mr. Meidl made to the asking of this witness's opinion based on the opinions of someone else is not being gotten around by calling those opinions findings. They are still the diagnoses.

Mr. Dillon: Observed facts are one thing and the diagnosis is another. I take it when he is talking about the displacement of the dorsal vertebra, and so forth, that that is an observed fact.

Mr. Bynon: Then the further objection arises, your Honor, that he is asking for unobserved opinions. In other words because a man is found to have a broken back is no sign that the doctor did or did not find something else and not state it.

The Court: Of course I can't determine that. If he wants to ask him a hypothetical question based upon certain facts he can ask it.

Mr. Bynon: Well, I wanted to save the time of the Court and jury here by not objecting to it any further. I just don't see that it is any different in the effect unless he makes a hypothetical question out of it.

Mr. Dillon: If the Court please, these are the

(Testimony of John C. Evans.)

physical findings, and if they desire me to put it as a hypothetical [235] question I shall put it that way, if these examinations show it, and as a matter of fact on second thought I am not sure we can't use the diagnosis because this evidence has been used by plaintiff and it is his diagnosis if it is a diagnosis of his doctors—he adopts it.

The Court: Well, of course, the difficulty is that the rule is that you shall not include in the hypothetical question the conclusions of any other doctor or any other expert, and that is what I have overruled. Now if you want to ask this witness any series of facts and ask him his opinion on them you will be permitted, of course.

Q. (By Mr. Dillon) The examination of January 8, 1924; I shall read merely the nervous examination. "Nervous system apparently normal"——

Mr. Meindl: (Interrupting) If your Honor please, to save time, that is still asking an opinion. "apparently normal" is the opinion of the doctor, it is not a physical finding like an X-ray.

Mr. Dillon: I don't know what more could be a physical finding; he examines the man and says "normal".

The Court: I think that I will rule that is fact and not an opinion. I think he is stating an observed fact.

Q. (By Mr. Dillon) Examination of February 11, 1925—I will confine it to the nervous system—"Normal. Urinalysis: yellow, clear." Examina-

(Testimony of John C. Evans.)

tion of April 4, 1916—I see no nervous examination. Examination of October 24, 1932; we have for the first time a complete neuropsychiatric examination. "Statement: Hospitalized for flu during service, and for injury when a pile of potato sacks fell on me, that was the day the Armistice was signed, and I was in the hospital until the next spring, then sent home on the hospital ship Mercy, and sent to hospital in New York for about two weeks, from there sent to Ft. Douglas, Salt Lake City, and there until August or September, from there sent to Des Moines, and from [236] Des Moines to Ft. Sheridan where I remained until discharged from army, S.C.D., May 22, 1920. No hospitalization since discharge but in the last year I have had four or five spells, of some kind, the first one about a year ago. I was walking along the street, my ears started to ring, and I had some sort of convulsion, I woke up in St. Vincent's hospital, remained there about 24 hours, was confused when I first came to and couldn't even tell them my name or where I lived. The next spell didn't last quite so long, I was on the street that time too. I felt like if I could get away from everybody and be alone I could fight it off, but I tried that the next time and it didn't work. I had one spell in the house, I live with my brother-in-law, and not long ago I had another one outside, I don't know how it happened but I hurt myself behind left ear, I was walking down 11th street the last I remember, and when I came to I was down

(Testimony of John C. Evans.)

on 6th street, and the blood was running down my neck, I was confused, and wouldn't even have been able to tell anyone my address, but could have walked all right. The last spell was two or three weeks ago, I woke up down in the Emergency Hospital, I was sick to my stomach, vomited and the muscles in my neck were sore, also muscles in abdomen were sore. I sleep pretty good, but it seems like I have the spells at night sometimes too, they wake me up, I might have a mild attack for a couple of nights in succession, then none for several weeks. The spell wakes me up and then I try to fight it off. I don't wet the bed or dribble in my clothes, and don't bite my tongue during the attacks. My appetite isn't very good. Bowels seem to be regular, move once a day. Sexually I'm all right. I have a dull ache in my head after the spells, and feel confused, don't think I could even tell anyone my name afterwards. Neurologic: A slender, fairly well developed and nourished white male, manifesting no disturbance in gait, station, speech or coordination, except that he has a little more difficulty standing on right foot in placing opposite heel to knee. [237] Back appears to be rigid. Musculature is in fairly good state of physical nutrition. No atrophy nor paralysis. There are no constant tremors, but at times both lower extremities tremble, more marked on the right. Sensory system: There are no complaints of pain on palpation or percussion over any area. No

(Testimony of John C. Evans.)

evidence of nerve tenderness, and no impairment of perception. Vibratory sense is normal in both lower extremities. Reflexes, deep and superficial are all present and within normal limits, except that knee jerks are obtained by suprapatellar percussion, bilateral, and while heel jerks appears to be diminished, there is a rapid movement in both ankles, like a very fine sustained clonus. Sphincters intact. No toe extension reflexes found. Patellar clonus is sustained, bilateral. Kleppelweil not found. Cranial nerves, smell, vision and taste are unimpairfed. Patient complains of roaring both ears just before seizures. 5th and 11th are negative. Mimicry, movements of tongue and deglutition are undisturbed. Eyes are not prominent; fields, grounds and movements are normal, normal cupping, no nystagmus. Pupils are equal in size, regular in outline, react normally to light and in accommodation. Thyroid gland is negative. Hands and feet are warm and dry, palms are not calloused. In the mental field, except for apprehension, and self-concern, nothing abnormal is elicited. He is quiet, pleasant and cooperative." Having those findings, Doctor, before you, would you say there was anything on the findings that I have read to you that showed mental deterioration between 1920 and 1932?

A. That report you have just read does not indicate as near as I can determine any degree of deterioration at all.

Q. Doctor, is it not true that until the diagnosis of epilepsy is coupled with psychiatric deteriora-

(Testimony of John C. Evans.)

tion there is not a diagnosis of any impairment of the mind?

A. It depends upon the case. As I understand your question, an epileptic might be psychiatric or he might not be, and if [238] he was not psychiatric he might nevertheless be deteriorated.

Q. Deteriorated, but until he becomes psychiatric you cannot say that he is insane?

A. He would have to be psychiatric in order to say that he was insane. That is true.

Mr. Dillon: Thank you, Doctor.

Redirect Examination

By Mr. Meindl:

Q. Doctor, was Mr. Mahoney psychiatric when you saw him in 1934? A. He was.

Q. If Mr. Mahoney had been in practically the same condition as when you saw him for the last ten or fifteen years was he *the* insane also?

A. I didn't understand that question, please.

Mr. Dillon: Your Honor, that is the same repitition again.

The Court: The objection is sustained. That is not proper redirect examination.

Mr. Meindl: That is all.

Mr. Dillon: That is all, Doctor.

(Witness excused)

The Court: Ladies and Gentlemen of the Jury, you will observe the former instructions. You are now excused until tomorrow morning at ten o'clock.

(Thereupon, at 5:35 o'clock P. M., December

10, 1942, an adjournment was taken until 10:00 o'clock A. M., December 11, 1942.) [239]

Portland, Oregon, December 11, 1942.
10:00 A. M.
(Pursuant to adjournment.)

The Court: You may proceed, Gentlemen.
Mr. Meindl: Call Dr. Finley.

KNOX H. FINLEY

was thereupon produced as a witness in behalf of the plaintiff herein, and, having first been duly sworn, was examined and testified as follows:

Direct Examniation

By Mr. Meindl:

Q. Would you state your name, please, Doctor?

A. Knox H. Finley.

Q. And where do you live?

A. University Club, Portland, Oregon.

Q. And what is your profession?

A. Physician.

Q. Are you licensed to practice medicine in the State of Oregon? A. Yes, sir.

Q. And how long have you been so licensed?

A. Five months.

Q. Would you tell us what medical schools you are a graduate of?

A. Yale University, School of Medicine.

(Testimony of Knox H. Finley.)

Q. Have you specialized in any branch of your profession? A. Neurology and psychiatry.

Q. Have you done any special work in that subject? A. Yes, sir.

Q. Would you tell us what that is, Doctor?

A. It involves eight years of special training in the sciences directly dealing with the nervous system, and hospital internships with residences in both neurology and psychiatry, and three years of teaching neurology and psychiatry and some private practice in both neurology and psychiatry. [240]

Q. Would you tell us where you had this special training?

A. At the Massachusetts General Hospital in Boston, Massachusetts in neurology, abroad in Amsterdam in neurology, in the Boston Psychiatric Hospital, Boston, Massachusetts, in psychiatry.

Q. And where did you teach the subject, Doctor?

A. I taught neurology and psychiatry at the Harvard Medical School for three years.

Q. Doctor, have you examined William V. Mahoney, the insured in this case?

A. Yes, sir.

Q. When did you make your examination?

A. On the morning of December 9, 1942.

Q. And Doctor, what were your findings at that time?

A. When I examined Mr. Mahoney on this date he was a very dull individual. His responses to questions were rather slow and sometimes hesitant.

(Testimony of Knox H. Finley.)

Although his memory for the events early in his life are quite normal his memory for more recent events was impaired. His grasp or knowledge of events at the time, particularly with regard to the World War and the position of our troops, was distinctly limited. He made conflicting statements with regard to his present illness that led me to believe that his memory regarding it was rather impaired—partially impaired.

Q. Did you make any test with regard to the condition of his brain, Doctro?

A. I did what is known as an electroencephalogram, that is, regarding the electrial frequency discharges from the brain, by placing electrodes over the various parts of the head, and the pattern that was obtained from that record showed that the brain was not functioning normally.

Q. Doctor, do you have an opinion whether or not Mr. Mahoney is of an unsound mind at the present time?

A. My opinion at the time that I saw Mr. Mahoney was that he was of unsound mind.

Q. In your opinion is there any cure for that condition? A. No, sir.

Q. How does that state of unsound mind that you found affect [241] his judgment?

A. Well, his judgment would be impaired in his lack of acute thinking and in the fact that his memory is partially impaired. His judgment, would be defective, it seems to me.

(Testimony of Knox H. Finley.)

Q. Doctor, would you assume for the following question that the following facts are true: Assume an individual prior to July 15, 1917 was normal mentally and physically and then entered the Army on that date, and assume further, Doctor, that in January of 1920 while home on a furlough for a few weeks it was noticed that he was very nervous and quarrelsome and hard to get along with, seemed to be afraid of something, his mind seemed to be rambling, his conversation was rambling and disconnected, he never could stay on one thing at a time, felt that someone was always trying to do him wrong, that everyone was down on him, that he was changed considerably from what he was before he went into the Army, that he didn't seem to care for anything in January of 1920, he would just sit around the house and would listen with a stare on his face, you would have to talk to him several times to get an answer out of him, imagined everybody was bothering him, that somebody was after him, that he would sit and stare, didn't seem to want to talk to anyone, that he was very nervous and felt people were against him, that that condition was also noticed in the summer of 1920 after his discharge from the Army, was noticed again in 1927—may I have the deposition? Also the same symptoms were noticed in 1937 or 1938 while a patient in the Roseburg Hospital for mental patients. I should also say, assume that individual was in the same condition that you found Mr. Mahoney to be in at the date of your examination

(Testimony of Knox H. Finley.)

of Mr. Mahoney. Would you have an opinion as to the mental condition of that patient back in January of 1920 when he was home on his furlough?

A. Well, assuming that the information which you have just presented is true my opinion would be—— [242]

Mr. McGan: (Interrupting) I ask that the answer be stricken as not responsive, your Honor. The question was, did he have an opinion?

The Court: That was the question.

Mr. Meindl: That is correct.

Q. Do you or do you not have an opinion, Doctor, first, and then we will ask what it is. A. I do.

Q. Would you state what that opinion is, Doctor?

Mr. McGan: If the Court please, we object to that. It invades the province of the jury and the hypothetical question is unfair in that it assumes facts to be true not shown by the evidence.

The Court: I don't think the question in total effect is unfair. It may be that some of these facts are not entirely established by evidence. You may argue that to the jury. Counsel has a right to ask any hypothetical question, and of course the jury must determine whether the facts are true. He may answer.

Q. (By Mr. Meindl) What is that opinion, Doctor?

A. My opinion is that in—was it 1920 or '21?

Q. January of 1920 when he came home on a furlough.

(Testimony of Knox H. Finley.)

A. That in January, 1920 this man was at that time mentally ill, that is, the illness that he presented at the time I saw him was in existence at that time.

Q. In your opinion would that individual be of an unsound mind at that time? A. Yes.

Q. Doctor, was that such a condition, assuming these same state of facts, that was curable?

A. Would you ask that again, please?

Q. Assuming the same state of facts, Doctor, was that condition a curable or incurable one?

A. Well, on the basis of my—— [243]

The Court: (Interrupting) Just a moment; I think you are going too far when you ask that at that time. You can ask about his present condition.

Mr. Meindl: Do I understand, your Honor, that the Doctor would not be permitted to give his opinion as to whether or not, assuming all those facts to be true, it was a curable or incurable condition?

The Court: I take it that you are asking there one of the key questions of the case. I think you could ask him from his observation now whether it is curable at the present time.

Mr. Meindl: Well, he has already so testified, that it is not curable.

The Court: Yes, I so understood.

Mr. Meindl: You may cross-examine.

(Testimony of Knox H. Finley.)

Cross-Examination

By Mr. Dillon:

Q. Doctor, as I understand it, you first examined and saw this man the 9th of December, 1942?

A. Yes, sir.

Q. You never saw him before? A. No, sir.

Q. You never made any examinations before that? A. No, sir.

Q. Was this examination made for the purpose of testifying at this trial? A. Yes, sir.

Q. And was your examination based on the history given to you by the patient?

A. Partially only.

Q. To what extent?

A. To the extent of questioning him about his epileptic condition and the injury which he received when he was in the Army, in the armed forces preceding 1920, I believe. [244]

Q. How much part did that history play in your final diagnosis?

A. May I ask you, in my questioning or in my total examination of the patient?

Q. The total examination of the patient.

A. From my examination of the patient and the questioning of the patient and the fact that he had scars on his tongue my opinion was that the patient had had epileptic attacks for——

Q. (Interrupting) I didn't ask you that, Doctor. That isn't in your diagnosis. I asked you the question, to what extent did the history given to

(Testimony of Knox H. Finley.)

you make up in your diagnosis, which I understand is of unsound mind——

Mr. Meindl: (Interrupting) If your Honor please, we object to counsel not letting the witness finish his answer. He was answering the question very definitely.

The Court: The objection is overruled. This is cross-examination. Counsel has wide latitude in that regard. Proceed.

A. It is a little difficult to answer. It influenced my——

Q. (Interrupting) Could you have made a diagnosis if you had not had the history the patient gave you? A. No.

Mr. Dillon: Your Honor, I ask that the testimony be stricken.

The Witness: That is the history, not my examination.

The Court: Now just a moment; you are just here to answer questions. Counsel is arguing to the Court.

Mr. Dillon: He said he made the examination for the purpose of testifying at this trial, and it is not permissible for a history to be given for that purpose, as it is a self-serving declaration.

Mr. Meindl: May I be heard, your Honor, on that?

The Court: Yes.

Mr. Meindl: This being a mental condition, your Honor, is an exception to the general rule on that, in that it isn't basing the history as being

(Testimony of Knox H. Finley.)

matters of fact. In a neurological [245] examination you talk to a patient just like you examine a man with a broken arm. That rule is not applicable in this type of case.

The Court: The motion is denied.

Q. (By Mr. Dillon) Doctor, would you point out to me the symptoms in the hypothetical question that are a sufficient basis for you to express an opinion that this man was of unsound mind in 1920?

A. The delusions or ideas of persecution, his rambling and irrelevant speech, his unstable, erratic behavior, are the main symptoms which lead me to base my opinion.

Q. And what were those delusions of persecution? A. I do not know.

Q. And what was that rambling speech?

A. I do not know.

Q. And what was the unstable behavior?

A. The fact that while the man was employed he often went off by himself in secluded places, isolated places, and had a stary expression.

Q. Was that included in the hypothetical question, Doctor, that statement that you have given?

A. No, it was not.

Q. Then, Doctor, you are willing as an expert in neuropsychiatry on those two *o*solated—not facts but statements presented to you to hazard an opinion on those facts that this man was of unsound mind in 1920?

A. Assuming that they are correct, yes, sir.

(Testimony of Knox H. Finley.)

Q. Then Doctor, you have no facts from 1920 to your present examination, and do I understand you to say that he continued of unsound mind from 1920 until the date of your examination?

A. I had the occasion to look through the records, both Government records and Veteran records of the patient in the Veteran's Hospital—— [246]

Q. (Interrupting) Doctor, I will ask you in those examinations from 1922 to 1934 what you found on which to base an opinion that this man was of unsound mind—if you do have that opinion; you haven't expressed it yet—from 1922 to 1934.

A. I can't answer that because I don't remember definitely the dates of these hospital examinations.

Q. I will tell you there was no hospital examination until 1934. What then would you find in those reports you examined between 1922 and 1934 on which to base an opinion, if you have one, that this man was of unsound mind from 1920 to 1934?

A. On the basis of the history that the patient had been an epileptic, had had his first epileptic attack, I believe it was in 1929 or 1930. That would lead me to believe that he was certainly mentally unsound, I feel, at that time.

Q. And I understand you to say because a man has an epileptic convulsion in 1929 he is ipso facto of unsound mind? A. No.

Q. Wasn't that what you said, that that is what you picked out, that in 1929 as you recalled it he had an epileptic seizure, and that was the basis

(Testimony of Knox H. Finley.)

why you said you thought he was of unsound mind?

A. The diagnosis in those hospital records is epilepsy with mental deterioration, and it is my opinion that he was mentally deteriorated preceding his admission at the hospital at that time.

Q. That wasn't the question, Doctor. I asked you before 1934. That is the first hospital examination. What is there in any of those reports on which you might base a diagnosis of unsound mind? A. Nothing.

Q. And then do you still contend, when there is nothing there, that this man was of unsound mind during the years 1920 to 1934?

A. On the basis of the—— [247]

Q. (Interrupting) I say, first, do you express that opinion?

A. Do I still express that opinion now?

Q. That the man was of unsound mind, when you say there was nothing in those reports on which to base such a diagnosis. Do you still say that between 1920 and 1934 this man was of unsound mind? A. That is my opinion.

Q. Based on what, Doctor?

A. Based on his behavior, mental reactions, and as given in the hypothetical question, which facts if correct lead me to believe that he was at that time showing evidence of his present mental illness.

Q. Showing evidence—but do you still contend that evidence was sufficient to say he was of unsound mind? A. Yes.

(Testimony of Knox H. Finley.)

Q. Doctor, will you point out in that hypothetical question any evidence of that between the years 1927 and 1934?

A. Between 1927 and 1934?

Q. Yes. A. I cannot.

Q. Then on what basis do you still say this man was of unsound mind between the years 1927 and 1934?

A. On the basis of my knowledge of this type of mental picture and the evidence that the man's brain at the present time is not a normal organ, that this condition in my opinion existed well before 1934.

Q. You have given your opinion, Doctor. I am asking for the basis of it. What is there in the hypothetical question or in any information contained in the file or any information given by this man at this trial that indicates to you the condition of this man's mind from 1927 to 1934?

A. I know of none.

Q. And yet you continue to express your opinion that he was in that period of unsound mind? [248]

A. That is my opinion.

Q. Doctor, what do you mean by "unsound mind"?

A. I mean by "unsound mind" an alteration either in a man's judgment, behavior, memory, or emotional reactions, one part or all of these things.

Q. Is unsound mind synonymous with insanity?

Mr. Meindl: If your Honor please, that would be a legal question, the definition of what insanity is.

(Testimony of Knox H. Finley.)

The Court: No, it is not a question of law. The Doctor is testifying as an expert and is using certain terms. Counsel has a right to ask the meaning. He may answer.

The Witness: Would you present your question again, sir?

Mr. Dillon: Would you kindly read it, Mr. Reporter?

(The question was read)

A. The term "insanity" is not a term that is used a great deal in medicine. It is a term that has a very loose meaning and it depends upon your definition of insanity whether it is synonymous with an unsound mind. If you mean by insanity any alteration in the personality, in the way of judgment, emotional reaction, behavior, memory, then it is. If you mean by insanity, as it is often used, that it is a severe type of emotional breakdown or mental deterioration, then it is a severe type of unsound mind.

Q. Is the medical definition—term—for insanity a man suffering with psychosis?

A. Well, I am unable to state that that is a definition that is presented in a medical dictionary, but it is sometimes used as being synonymous with psychosis, yes, sir.

Q. At any time during the life of this man from 1920 to 1934 do you find anything in the hypothetical question, in your examination, or in the medical records between those periods to indi-

(Testimony of Knox H. Finley.)

cate that this man ever was suffering from a psychosis?

A. There is information given that leads me to the opinion that this man was suffering from a psychosis between—— [249]

Q. (Interrupting) What is that information?

Mr. Bynon: If your Honor please, I hesitate to interrupt counsel, but I do not think we should sit here without objecting to his cutting off the witness' answer.

Mr. Dillon: Oh, I beg your pardon; I didn't know I had.

Mr. Bynon: He doesn't mean anything by it, but it isn't fair to the jury.

The Court: I think that is correct.

Mr. Dillon: I certainly beg your pardon.

The Court: I will give you an opportunity to complete the answer. Will you read the question?

(The record was read.)

A. (Continuing) One of the hospital reports and the history gave information that led me to believe that this patient had been psychotic—had a psychosis in relation to his epilepsy, probably in 1929 or 1930.

Q. (By Mr. Dillon) What examination was that, Doctor, that you obtained any such history from?

A. It was one of the Veterans Hospital reports.

Q. For what year?

A. I am not certain. I believe it was——

(Testimony of Knox H. Finley.)

The Court: (Interrupting) If you are going to ask the Doctor about the record, produce it.

Mr. Dillon: Your Honor, I don't know which record he refers to.

The Court: You have the reports of the Veterans Bureau.

Mr. Dillon: Yes, but they are numerous, and I thought if he could tell us which one——

The Court: If you are going to examine the records you will produce them for him.

Mr. Dillon: I don't wish to argue at all, your Honor. He made reference——

The Court: (Interrupting) No, you don't need to argue. Pass him up that file of the Veterans Bureau and let him look [250] at it. He will be able to tell you, probably.

A. On October 24, 1932—is this all from the Veteran's Hospital?

Mr. Dillon: Yes.

The Witness: In one of the Veterans Hospital's reports the patient himself gives a history of having had spells in 1931, and his wife at a later time, which was obtained April 5, 1934—"from the social history as given by the wife it is evident that he first started having seizures over five years ago." That was the statement I referred to.

Q. Then I understand you to say at this time that the fact he had a seizure was the basis for you to say he was suffering from a psychosis.

A. No.

Q. That was the question as I remember, Doc-

(Testimony of Knox H. Finley.)

tor. What was there to base any opinion this man was suffering from a psychosis between 1927 and 1934?

A. Well, it had been observed in some of the records here that the patient had a post-psycotic episode—had post-epileptic psychotic episodes, that is, he became psychotic following some of his epileptic attacks.

Q. Where is that to be found, *Cotor*? At what time?

A. It is based in part upon the diagnosis of epilepsy with mental deterioration.

Q. No, Doctor, I am sorry, not the diagnosis, the findings. As a matter of law, as the Court has stated, it can't be based on the diagnosis.

A. On October 10, 1935 there is a statement that the patient is psychotic at this time, and at this time, October 11, 1935, he is said to be hazy, his speech irrelevant, rambling, at times delusional. I don't believe there are any further facts in the record——

Q. (Interrupting) Doctor, what is there in those that you [251] found in October, 1935 that throws any light on your opinion that he was suffering from a psychosis from 1927 to 1934?

A. In these records?

Q. Yes.

A. Facts?

Q. Yes.

A. None.

Mr. Dillon: That is all.

(Testimony of Knox H. Finley.)

Redirect Examination

By Mr. Meindl:

Q. Doctor, what are the symptoms of a patient when he feels that people are against him, when he is very nervous, sits with a vacant stare, his conversation is rambling and disconnected and he imagines everybody is against him, that somebody is after him, when he is found staring out of the window or staring into space with a fixed stare, takes a prejudice against certain people, and that is a changed condition from the way that individual has been before, a changed personality? What is that evidence of?

Mr. McGan: If the Court please, I object to that as not proper redirect. It was gone into on direct.

The Court: The objection is sustained.

Mr. Meindl: No further questions.

(Witness excused.)

The Court: You may take a short recess, Ladies and Gentlemen.

(A recess was then taken, after which proceedings were resumed as follows:)

Mr. Meindl: If your Honor please, the plaintiff offers part of the Pre-Trial Exhibit No. 10, the part being offered being the commitment and also the note of the hospital at Salem. [252] Those can be marked as 10-A and 10-B.

Mr. McGan: If the Court please, I was under the impression that the exhibit was offered in evidence yesterday when Dr. Evans testified in its entirety.

Mr. Meindl: It was not offered, your Honor.

The Court: Anyhow this present portion is admitted if it is not already in. [253]

(The commitment was thereupon received in evidence and marked Plaintiff's Exhibit 10-A, and is in words and figures as follows, to-wit:)

PLAINTIFF'S EXHIBIT 10-A

In the Circuit Court of the State of Oregon for the County of Multnomah, Department of Probate

In the Matter of The Examination of Wm. V. Mahoney Charged as insane

ORDER

The above matter having come regularly on for hearing before the court, and being fully advised in the premises, and having made its Findings of Fact,

Now, Therefore, it is hereby ordered and adjudged that until said insane person shall be discharged from the.....Oregon State Hospital to which he has been committed;

Now, Therefore, it is hereby ordered and adjudged that neither the estate nor any legally responsible relative of such insane person is able to pay the costs of the latter's care and maintenance.

Done in open court this 9 day of March, 1934.

GEORGE TAZWELL
Circuit Judge

U. S. District Court
District of Oregon

[Endorsed]: Filed Dec. 12, 1942. [254]

Plaintiff's Exhibit 10-A—(Continued)

INSANE COMMITMENT—WARRANT—2

In the Circuit Court of the State of Oregon for the County of Multnomah

Department of Probate

In the Matter of the Examination of Wm. V. Mahoney Charged as Insane

WARRANT

To Martin T. Pratt, Sheriff of said County, and
To R. E. Lee Steiner, Superintendent of the Oregon State Hospital at Salem, Oregon.

Whereas, Wm. V. Mahoney has been this day duly examined as to his sanity, and upon the certificate of Max Himmelfarb a competent physician, a copy of which is hereto attached, it has been duly adjudged and determined that said person is insane and that he is committed to the..... Oregon State Hospital for the Insane at Salem, Oregon; and it having been ascertained that the true name of said person is Wm. V. Mahoney; age 37; nativity American; permanent residence.....; and the cause of such insanity.....

Now, Therefore, you are hereby commanded to take and safely keep and properly care for the said Wm. V. Mahoney and promptly and safely deliver him to the proper authorities of said.....

Plaintiff's Exhibit 10-A—(Continued)

Oregon State Hospital at Salem, Oregon, in the manner provided by law.

GEORGE TAZWELL
Circuit Judge

(Note—Sheriffs in telegraphing for attendants should give name, character, condition and sex of patients; also how many attendants they believe necessary.) [255]

INSANE COMMITMENT—NOTICE OF INSANITY—2

In the Circuit Court of the State of Oregon for the County of Multnomah
Department of Probate

In the Matter of the Examination of Wm. V. Mahoney Charged as Insane

NOTICE OF INSANITY

To the Hon. George Tazwell, Circuit Judge of said County:

The undersigned petitioner respectfully represents and shows to your Honor that Wm. V. Mahoney, a resident of the City or Town of Portland, County of Multnomah, State of Oregon, is an insane person, and by reason of such insanity is unsafe to be at large, or is suffering from exposure or neglect; that he has relatives, to wit:

.

.

Plaintiff's Exhibit 10-A—(Continued)

Wherefore, Your petitioner prays that you cause said Wm. V. Mahoney to be brought before you, at such place as you may direct, and due inquiry made as prescribed by law, concerning the matter alleged in this notice.

LESLIE L. WATSON

State of Oregon
County of Multnomah—ss.

Leslie L. Watson

the petitioner above named, being first duly sworn, severally says that the foregoing petition is true, as he verily believes

LESLIE L. WATSON

Subscribed and sworn to before me this 9 day of March, A. D. 1934.

(Circuit Court Seal)

A. A. BAILEY,
County Clerk
MERLE S. HOTCHKISS,
Deputy [256]

INSANE COMMITMENT—CERTIFICATE OF EXAMINING PHYSICIAN—3

In the Circuit Court of the State of Oregon for the County of Multnomah
Department of Probate

In the Matter of the Examination of Wm. V. Mahoney Charged as Insane

Plaintiff's Exhibit 10-A—(Continued)

CERTIFICATE OF EXAMINING PHYSICIAN

State of Oregon,
County of Multnomah—ss.

I, Max Himmelfarb, being first duly sworn, depose and say that I am a graduate of medicine and have practice my profession 7 years from the date of my diploma; that at the request and in the presence of Honorable George Tazwell, Circuit Judge of said County, I have carefully examined Wm. V. Mahoney in reference to the charge of insanity, and do find that he is insane.

The fact elicited by said examination are set forth in answer tot he following questions:

(Note—The examining physicians will please answer the following questions as fully as they can, as this certificate affords all the reliable information in regard to the previous history of the patient that the Superintendent of the Hospital can obtain.)

1. Patient's name: Wm. V. Mahoney
2. Residence? Does not know his address
3. Place of birth? Flandreau—So. Dakota
4. Industry or business in which work was done, as silk mill, sawmill, bank, etc.....
5. Date deceased last worked at this occupation (month and year).....
6. Total time (years) spent in this occupation: Bookkeeper—accountant
7. Neight? 5 ft. 11 in. 8. Weight?.....
9. Color of hair? Red. 10. Color of eyes? Blue.

Plaintiff's Exhibit 10-A—(Continued)

11. Date of birth (month, day, and year) April 11, 1896?
12. Race? W. 13. Education? College [257]
14. Religion? Cath.
15. Number of children living and number dead?
16. Age when first child was born?
17. Age of youngest child?
18. Any deformed or defective children?
19. How long in Oregon? 8 years.
20. How long in U. S.? Native
21. Name and birthplace of father? Thomas Mahoney—Ireland
22. Maiden name and birthplace of mother? Johanna McMahon—Minnesota
23. Cause of death of father? Dead—Cancer
24. Cause of death of mother? Senility
25. What relatives have been insane, epileptic, defective or criminal? None

Insane Commitment—Certificate of Examining Physician—4

26. Habits of parents? Good
27. Is patient single, married, widowed or divorced? Married
28. Name and address of husband, wife, or nearest relative? Mrs. Claire Mahoney—wife
29. Patient's habits? Drinks moderately
30. Is patient suicidal or homicidal? Suicidal. [258]
31. Number of attacks and duration of present attack? Attempted to commit suicide

Plaintiff's Exhibit 10-A—(Continued)

32. Give details of previous attacks? Was drunk. Tried to aboid someone by jumping into river.
33. Assign cause of attack? Delusions of persecution
34. Earliest symptoms noted and mode of development? Imagined that someone tried to get him.
35. Sleep? Fair
36. Memory? Poor
37. Headache or neuralgia?.....
38. Delusions, character of; are they fixed or changeable? Changeable
39. Hallucinations and illusions, whether or sight, hearing, taste or smell? Hearing, sight
40. Is patient noisy, restless, destructive or depressed? Restless, depressed
41. Brief history of diseases or injuries?
42. Age when menses appeared?
43. Amount and character before and since insanity appeared?
44. If past change of life, was it sudden or gradual, and symptoms?
45. Natural temperament and mental capacity? Poor at present
46. Is there loss or increased knee jerk, visual or pupilary defects? None
47. Has patient or parents had syphilis?
48. To what extent has patient used alcohol, opium or tobacco? Alcohol

Plaintiff's Exhibit 10-A—(Continued)

Insane Commitment—Certificate of Examining Physician—5

49. Are there bruises, scars or other evidence of present injury?
50. Has patient been exposed to any contagion? No [259]
51. Have there been any convulsive seizures? Question of epilepsy
52. Give history with dates of previous "strokes" or paralysis?
53. What treatment has been employed?..... ment? Rank and organization? Date and place of discharge? Which war?

Additional remarks?.....

.....

Names and addresses of relatives, guardians or friends to be notified in case of death, sickness, or discharge from Hospital, and who will furnish clothing and other necessary articles? Mrs. Clara Mahoney—Wife 621 S. E. Sixth Ave. Portland, Oregon

MAX HIMMELFARB M.D.

Subscribed and sworn to before me this 9 day of March, 1934.

(Circuit Court Seal)

A. A. BAILEY,
County Clerk
MERLE S. HOTCHKISS,
Deputy

Plaintiff's Exhibit 10-A—(Continued)

Insane Commitment—Order of Commitment—6

Be It Remembered, That at a regular term of the Circuit Court of the State of Oregon for the County of Multnomah, begun and held at the Courthouse in said County and State, on the 5 day of March, A. D. 1934, when were present: The Honorable George Tazwell, Judge, presiding:....., Clerk;, Sheriff;, District Attorney.

Whereupon, on the 9 day of March, A. D. 1934, the following proceedings were then had, to-wit:

[260]

In the Matter of the Examination of
Wm. V. Mahoney Charged as Insane

ORDER OF COMMITMENT

By virtue of a notice and petition filed in the above-entitled matter, I this day caused the said Wm. V. Mahoney to be brought before me at Portland in said county of Multnomah, State of Oregon, at 4:00 o'clock P. M.; also caused to appear at the same time and place Max Himmelfarb, competent physician, proceeded to examine the said Mr. V. Mahoney, and find as follows:

That the true name of the person named in the said complaint and petition is Wm. V. Mahoney; age 37 years; nativity American; present residence Portland; and the cause of such insanity.....
.....that Max Himmelfarb, competent physician....., after careful examination, has certi-

Plaintiff's Exhibit 10-A—(Continued)

fied on oath that the said Wm. V. Mahoney is insane and unsafe to be at large.

It Is Therefore Considered, Ordered and Adjudged, That the said Wm. V. Mahoney, is an insane person, and that he be and is hereby committed to the Oregon State Hospital for the Insane at Salem, Oregon, and there placed in charge of the officers having the aforesaid Hospital in charge, as provided by statute.

GEORGE TAZWELL
Circuit Judge.

Insane Commitment—Findings of Fact—7
In the Circuit Court of the State of Oregon
For the County of Multnomah
Department of Probate

In the Matter of the Examination and Commitment of Wm. V. Mahoney An Insane Person

FINDINGS OF FACT

The above-entitled matter having come regularly on to be [261] heard before the court this day.....
.....the wife (or husband).....
the father and mother respectively,.....
the children, and.....and
.....other interested persons,
as witnesses, and said persons having been examined under oath as witnesses by the court for the purpose of determining the financial ability of said insane person, his estate and/or relatives, to pay the costs and expenses of the car, maintenance, board,

Plaintiff's Exhibit 10-A—(Continued)

lodging and clothing of such insane persons at the hospital to which he has been committed, and the court being fully advised in the premises, makes the following Findings of Fact:

(1) That the estate of the said insane person, Wm. V. Mahoney, consists of real property of the value of at least $ none, and personal property of the value of at least $ none, and is subjects to debts and incumbrances in the sum of $....., and the said estate is not financially able to pay such costs and expenses.

(2) That said Clara Mahoney, the wife of said insane person, is the owner of property of the value of at least $ none, and is earning, or is capable of earning, the sum of at least $40.00 per month, and has no persons dependent upon him (or her) for support, other than said insane person, and is not financially able to pay such costs and expenses.

(5) That except as hereinbefore found by the court, neither the estate nor any of such relatives of said insane person is financially able to pay such costs and expenses.

Done in open court this 9 day of March, 1934.

GEORGE TAZWELL
Circuit Judge

[Endorsed]: Filed Mar. 9, 1934. [262]

(Plaintiff's Exhibit No. 10-B was thereupon received in evidence, and is in words and figures as follows, to-wit:)

PLAINTIFF'S EXHIBIT No. 10-B

Oregon State Hospital

CONTINUED NOTES

Name Mahoney, William V. No. 10441 Date Admitted Mar. 9, 1934.

Mar. 10, 1934: Age 37, married. Bookkeeper. Residence, Portland. Physical health fairly good. His tongue is bitten on both sides anteriarly. Patient states that he suffered a dislocated and broken back while in France during the Armistice. Claims that this injury gives him no trouble at the present moment. However, he is drawing compensation at the rate of $45 per month. Commitment claims he drinks moderately and is suicidal. Recently tried to jump off the bridge into the river, particularly to avoid someone whom he thought was after him. Has delusions of persecution. Imagines someone is trying to kill him. Delusions changeable. Hallucinations of hearing and sight, is restless and depressed. There is a question of epilepsy in his case. This morning patient exhibited a badly bitten tongue and gave the history that recently he thought a certain policeman in Portland was framing him, put up a gag upon him and got his name mixed into it and took a very serious dislike to him. Says there was no reason for this, but the policeman attacked him upon the bridge and was going

to throw him into the river. In fact, when the bitten tongue was discovered, epilepsy was at once suspected and the patient admits that he had his first spell about 10 years ago and has had many convulsions since that time, that he has them about once a month and sometimes he will have two or three spells in short order. In fact, he was some what dazed and it was impossible for him to give a dependable history this morning. [264]

Diagnosis: 17-A. Epileptic deterioration.

JCE B

Mar. 13, 1934:Blood Kahn test, negative.

Mar. 14, 1934: Fluoroscopic Examination. Negative heart and lungs.

Apr. 5, 1934: Discharged for transfer to American Lake.

U. S. District Court
District of Oregon

[Endorsed]: Filed Dec 12 1942 [265]

Mr. Meindl: Your Honor, may we have leave of the Court to have those two documents photostated and photostats substituted in place of the originals?

Mr. McGan: No objection.

The Court: Permission is granted.

Mr. Meindl: Plaintiff rests, your Honor.

Mr. Dillon: If the Court please, may the Government at this time make a motion outside of the presence of the jury?

The Court: I think you will have to make your

motion in the presence. The argument may be made out of the presence.

Mr. Dillon: Comes now the defendant at the close of plaintiff's case and asks the Court to dismiss the complaint on the grounds and for the reasons, first, that it affirmatively appears that the Court has no jurisdiction to hear and determine this case, that there has been introduced in this case no substantial evidence tending to prove that the insured was insane or that he was rated as incompetent or insane by the Veterans Administration on or prior to July 3, 1931; that it affirmatively appears from the evidence in this case that on and before July 3, 1931 the assured was not insane and that [266] he was not rated by the Veterans Administration as incompetent or insane.

The Court: Ladies and Gentlemen, counsel desire to argue a question of law before the Court. You may retire during the time or argument.

(The jury thereupon withdrew from the courtroom, and the matter was argued to the Court.)

The Court: I will submit it to the jury. Motion denied. Call the jury.

(The jury was thereupon called into the courtroom and further proceedings were had in their presence as follows:)

The Court: Proceed. Motion denied. Exception allowed.

Mr. McGan: If the Court please, the defendant offers now in evidence Pre-Trial Exhibit No. 9,

depostion of Thomas McGrath, Minot, North Dakota, Blanche Callahan, Minot, North Dakota, and Nels O. Nelson, Minot, North Dakota. May we read them from the table, your Honor? We have only one copy.

The Court: Yes.

Mr. Dillon: Will counsel be allowed to read both question and answer?

The Court: Yes.

(The depositions of Thomas J. McGrath, Nels O. Nelson, and Blanche Callahan, Defendant's Pre-Trial Exhibit No. 9, were then read to the jury; said depositions, omitting all formal parts, are in words and figures as follows, to-wit:)

T. M. McGRATH

being first dury sworn, testified as follows:

Direct Examination

By Mr. McGan:

Q. State your name.

A. Timothy J. McGrath. [267]

Q. Where do you live?

A. 204 East Seventh Street, Minot, North Danota.

Q. What is your business?

A. Accountant for the Northern States Power, Minot.

Q. As such accountant have you personal supervision of the original payroll records of the company? A. I do.

(Deposition of T. M. McGrath.)

Q. Do you have a record of the employment with the Northern States Power Company of William V. Mahoney?

A. Yes, sir, on our records, the records I have with me, it is shown "W. Mahoney."

Q. And are those records that are kept in the ordinary course of business? A. Yes, sir.

Q. Are they made reasonably contemporaneously with the events and facts recorded there?

A. Yes, sir.

Q. Are they records your company requires you to keep? A. They are.

Q. And they are pursuant to that requirement of the company kept in the ordinary course of business? A. Yes, sir.

Q. Will you consult your record—do you know this man Mahoney? A. I do not.

Q. You have no information of your own knowledge as to his employment with the company?

A. None whatsoever, except as appear on the record.

Q. Will you consult your record, if you please, sir, and tell us when Mr. Mahoney was first employed for the Northern States Power Company?

A. The first record of Mr. Mahoney is in July 1920.

Q. What date in July, please?

A. He was hired at a salary of $75. a month and for the first two weeks period was paid $37.50, so I assume he was hired on the first of July as an office boy. [268]

(Deposition of T. M. McGrath.)

Q. Did he continue working throughout that month?

A. He did the entire month of July.

Q. Do *you* records show how much he was paid for the second half of the month? A. $37.50.

Q. Do you have a record of the number of days he worked that month?

A. Not by days. Apparently at that time if they did keep a record by days, and I assume they did some place, we are unable to locate them at the present time. And I might also mention that the policy of the company has been to pay a man in full if he was off for a day or two at the time because of sickness. There is nothing on here to indicate whether or not he was off any portion of that month.

Q. If he had been absent from his work any portion of that month, could that have been recorded on the records you have before you?

A. No, sir, not for the month of July. It is in later periods here.

Q. Do your records show he continued to work throughout the month of July?

A. He was paid for the full month and I assume he did.

Q. Now, the next month, the month of August?

A. August, 1920, he was paid $37.50 for the first half, and the same amount for the second half.

Q. And in the same position?

A. In the same position.

Q. And the next month, please.

(Deposition of T. M. McGrath.)

A. September, 1920, Mr. Mahoney was paid $75. for the month.

Q. In the same position?

A. In the same position.

Q. Now, in the next month?

A. October, 1920, he was paid the same amount in the same position. [269]

Q. And the next month, November?

A. November, 1920, he was paid the same amount in the same position.

Q. And all of these months we have gone over, Mr. McGrath, have you noticed whether there is any record of his being off any time because of illness?

A. There isn't, but these records so far wouldn't indicate that.

Q. Now, the next month?

A. December, 1920, Mr. Mahoney was paid $75. for the month in the same position. Beginning with January 1921, the payroll sheets indicate whether or not an employee was absent.

Q. Will you consult your records for the month of January and state what was his salary for that month? A. $75. per month.

Q. Was he in the same position?

A. As a clerk.

Q. As a clerk at this time. That is a change from that office boy?

A. There is no title shown for August 1920, and September 1920 he is shown as a clerk.

Q. He is shown as a clerk from September?

(Deposition of T. M. McGrath.)

A. That is the first change. Whether that indicates an advance or change in title, I wouldn't know. The salary is the same.

Q. Do your records for January 1921 indicate how many hours the man worked per day?

A. He worked eight hours per day.

Q. Is that for the full week?

A. That is for the Monday through Saturday. I assume that is the third through the eighth. He worked forty-eight hours. The tenth through the fifteenth, he worked forty-eight hours. The seventeenth through the twenty-second he worked forty-eight hours. The twenty-fourth through the [270] twenty-ninth, he worked forty-eight hours, and he worked eight hours on the 31.

Q. And the salary? A. $75. per month.

Q. So that there is no time lost for any reason whatever during January?

A. Not according to our records.

Q. Now, the next month of February?

A. No time lost during February.

Q. His salary? A. $75. per month, clerk.

Q. And the next month?

A. March, 1921, a total of 104 hours on the first half of the month. A total of 112 hours in the second half. No time lost according to the records; salary, $75. per month.

Q. Now, the next month?

A. April 1921. There was no time lost in that month; pay, $75. as a clerk.

Q. He worked the average number of days?

(Deposition of T. M. McGrath.)

A. He worked the usual number of hours.

Q. And the usual number of hours each day?

A. That is right.

Q. And the next month?

A. May 1921. According to the records there was no time lost any time during the month. He received $75. for the month as a clerk.

Q. And the next one?

A. June 1921, no time lost. He received payment of $75. as a clerk.

Q. And the next month?

A. July 1921 indicates no time lost; received $75. for the month as a clerk. August 1921 shows no time lost; payment of $75. for the month as a clerk. September 1921 no time lost; received $75. for the month as a clerk. October 1921, [271] Mr. Mahoney was absent according the the *recors,* October 28, 29, and 31. He received full pay of $75. for the month in the position of clerk.

Q. Do your records indicate why he was absent? A. It does not.

Q. And you, of course, do not know of your own personal knowledge? A. I do not.

Q. Now, the next month.

A. November 1921, according to the records, Mr. Mahoney was off on the 26 of the month, received full pay of $75. as a clerk.

Q. Do your records show whether or not he worked the other days in the month?

A. He worked the other days in the month, with the exception of Sunday.

(Deposition of T. M. McGrath.)

Q. Now, the next month?

A. December 21, Mr. Mahoney apparently worked the entire month, received $75. in salary in the position of clerk.

Q. Were there any days lost at all?

A. No days lost, according to the records, in the month of December 1921.

Q. What was the last day he worked in December? A. December 31.

Q. In the next month?

A. January 1922, the name does not appear on our payroll records.

Q. Do you know of your own knowledge whether or not he left your employ at that time?

A. I assume he did. Raymond Abbott appears as a clerk, and his name did not appear until that time. That seems to complete our records in the case of Mr. Mahoney.

Q. These records you have been testifying from, Mr. McGrath, state whether or not they are your original payroll records? [272]

A. They are our original records in so far as the payment of salary is concerned. I do not know whether there are any supplemental records, but I assume there were turned in by the heads of the department covering hours of time, work by the employees, and the various accounts to which such time should be properly charged.

Q. But these records are, so far as the auditor's office of the Northern States Power Company is

(Deposition of T. M. McGrath.)

concerned, your own original records? They are the records made by the auditor's office?

A. That is right, covering the payment of salary; and since January 1921, covering the hours worked by each employee.

Q. Is this man carried on your books throughout as "W" Mahoney, or under what name?

A. In some instances he is shown as "W" Mahoney, and in others as William, "wm."

Q. Do you have in your office, Mr. McGrath, what is known as a personal record of the man. That is to say, a record showing his application for employment, physical examination, if any taken at the time of employment. A. We do not.

Q. Do you have any records showing the reason the man left your employ? A. No, sir.

NELS O. NELSON

being first duly sworn, testified as follows:

Direct Examination

By the Attorney, Mr. McGan:

Q. If you will, state your name please?

A. Nels O. Nelson.

Q. Where do you live, Mr. Nelson?

A. I live at 209½ First Street Southwest. This address here is not correct. That is southeast.

[273]

Q. What is your business, please, Mr. Nelson?

A. Meter, Electric Meter Department.

(Deposition of Nels O. Nelson.)

Q. Of the Northern States Power Company?

A. Electric meter and telephone.

Q. At Minot, North Dakota? A. Yes.

Q. How long have you been with the company, Mr. Nelson?

A. I went to work for them in 1907.

Q. You have worked for them continuously since then?

A. Yes, but here is something comes in. I was off in 1920. I happened to hear your dates on Mahoney. I was gone from the 15 of June that year until the 15 of October. I was out. That was 1920.

Q. Did you know William Mahoney?

A. I used to see him as a kid.

Q. You knew him?

A. I knew the Mahoney boys, sure, sure, I did.

Q. State whether or not William V. Mahoney was employed at the Northern States Power Company when you were there?

A. Oh, yes, he was there when I came back from Spokane in 1920.

Q. What was he doing at that time in his employment?

A. That is when he was working, some called the job of bell hop. You know, the man who takes the mail to the post office and does odd jobs for Hennessey, the assistant auditor, upstairs. He does all of them errands.

Q. Did you come in contact with Mr. Mahoney when he was employed there?

(Deposition of Nels O. Nelson.)

A. Oh, yes, sure, in this way, I saw him, joked with him. He had his work to do, but outside of that, I didn't have anything to do with him.

Q. State whether or not he had come to your department on errands?

A. Yes, he did come down and get orders, sure, and this stuff. [274] Get mail orders and meter orders.

Q. Were the packages he picked up, heavy packages? A. No, just light paper.

Q. For how long a period did this continue, Mr. Nelson?

A. I can't remember when he went. I don't remember.

Q. State whether or not you recall it was a considerable period of time Mr. Mahoney worked there?

A. That is hard to say. I know he worked there quite a while, but I couldn't say how long it was.

Q. Did you talk with Mr. Mahoney during this period? A. Yes, I talked with him.

Q. Did you notice his disposition?

A. Well, he never done me any harm. I get along with everybody anyway so far as I know.

Q. State whether or not his disposition was cheerful or not?

A. Well, just like the ordinary man would be, you know. Sometimes, you know, he might feel a little bit grouchy. I couldn't say anything out of the way on that. We always got along.

Q. Do you know whether or not he was particularly nervous?

(Deposition of Nels O. Nelson.)

A. No, I couldn't say as to that. He was just like an ordinary man to me. I couldn't say anything about that.

Q. State whether or not his conversation was intelligent?

A. Well, his conversation was all right so far as I noticed.

Q. State whether or not you noticed any signs of mental derangement?

A. The only thing I could say, we kind of would kid him a lot, you know, but I naturally do that with a bell hop anyway, you know. But, of course, I think it makes a difference too where you work for somebody. He didn't work for me. I had nothing about telling him what to do, or anything. I didn't have anything to do with that at all.

Q. State whether or not Mr. Mahoney seemed to take an interest in what he was doing down there?

A. Well, that is kind of a hard question to answer. [275]

Q. I will put it in another way, then. State whether or not, if you know, he gave satisfaction in his work.

A. Yes, sir, whatever he had to do to come and get there, I couldn't say anything against him. I couldn't notice but what he did his duties so far as getting orders and stuff down there.

Q. You have had other men in the same type of position since that time?

(Deposition of Nels O. Nelson.)

A. That is the way they start them out up there. They usually start them out as soon as somebody else quits at the office, or laid off, or stepped up, they get a chance to work on the books, or get a better job. I have seen dozens of them.

Q. You have seen dozens of them?

A. Yes.

Q. Can you compare the apparent efficiency of Mr. Mahoney with that of some of the others?

A. If you were going to say his physical defects, you could, but so far as outside of that, I couldn't say he was different from anybody else.

Q. Then Mr. Nelson, is it your opinion—state whether or not it is your opinion that he performed his duties there as well as the average boy in the job?

A. Upstairs that would be hard for me to tell, but downstairs any contacts I had with him, I couldn't say thing against him at all.

/s/ NELS O. NELSON.

BLANCHE CALLAHAN

being first duly sworn, testified as follows:

Direct Examination

By Mr. McGan:

Q. What your name, please?

A. Blanche Callahan.

Q. You reside in Minot, North Dakota?

A. Yes.

(Deposition of Blanche Callahan.)

Q. How long have you lived here? [276]

A. Well, I have been at the Northern States Power Company twenty-five years, I would say about twenty-seven years.

Q. Do you know William V. Mahoney?

A. I did.

Q. Did you work in the Northern States Power Company at the same time he did? A. I did.

Q. Do you remember how long he worked there, Miss Callahan?

A. A little better than a year, I think. I wouldn't say for sure. I looked at the sheets, but I can't remember now.

Q. State whether or not his work was in the same office you are? A. Yes, it was.

Q. What was his position?

A. Office boy and mail clerk.

Q. Did he do any office work?

A. No, not regular office work.

Q. State whether or not he ran an addressograph machine?

A. Yes, he ran an addressograph machine.

Q. Typewriter? A. No, not a typewriter.

Q. What was the purpose of running this addressograph machine?

A. To run off the electric, telephone, and telegraph bills, made up the blanks or orders.

Q. His other duties consisted of what, Miss Callahan?

A. Getting the mail and running miscellaneous errands.

(Deposition of Blanche Callahan.)

Q. State whether or not you always have a boy to do that work around?

A. Yes, we always have a boy to do that.

Q. Did you during this period come to know this Mr. Mahoney well?

A. Fairly well. As well as you do a person you are working with.

Q. State whether or not you noticed during this time any signs [277] of mental deficiency?

A. No, I did not.

Q. If you could observe his general efficiency in his job?

A. So far as I can remember, he did his work all right.

Q. You can state whether or not you know why Mr. Mahoney left?

A. He left to go west.

/s/ BLANCHE CALLAHAN.

Mr. Meindl: Your Honor, I think the record should show the appearance there, that the plaintiff was not represented to take the deposition.

Mr. McGan: The defendant now offers to read in evidence—is there something before the Court?

The Court: There is nothing before me. He wanted to suggest that he wasn't at the taking of the depositions. I don't know what difference it makes. It is now twelve o'clock. We will suspend. Ladies and Gentlemen, you will observe the former instructions, and return here at two o'clock this afternoon.

(Thereupon at 12:00 o'clock noon, December 11, 1942 a recess was taken until 2:00 o'clock P. M. of the same date.)

Portland, Oregon,
December 11, 1942,
2:00 P. M.
(After recess.)

The Court: You may proceed.

Mr. McGan: If the Court please, the defendant now offers in evidence Exhibit No. 8—Pre-Trial Exhibit No. 8, the deposition of George Dunlap, the deposition of James E. Mahoney, [278] that portion which has not been read by the attorney for the plaintiff, and the deposition of Francis Patrick Mahoney, that portion that has not been read.

The Court: Proceed.

Mr. McGan: I also offer to introduce in evidence at this time Pre-Trial Exhibit No. 8-A, statement of James E. Mahoney.

Mr. Meindl: The same objections as are included in the deposition.

The Court: In view of the fact that part of this testimony has been read the balance of the deposition may be offered and may be received, and likewise the Court will now admit Exhibit 8-A. I will limit that purpose if you wish, but I am not going to do it unless you ask me to.

Mr. Meindl: Your Honor, we will stand on our objections as made to the deposition.

Mr. McGan: Deposition of Mr. George Dunlap——

The Court (Interrupting): Just a moment. I want to consider this.

Mr. McGan: Pardon me.

The Court: I will admit Exhibit 8-A for the purpose of impeachment insofar as it is inconsistent with the testimony which has been offered and read by the plaintiff.

Mr. McGan: Yes, your Honor. If the Court please, there is an objection that appears by Mr. Meindl. Shall I read it?

Mr. Meindl: The objections are waived, as I understand the deposition. [279]

(The deposition of George Dunlap and the parts of the deposition of James E. Mahoney, which were not previously read, Defendant's Pre-Trial Exhibit No. 8, were then read to the jury; said depositions, omitting all formal parts, are in words and figures as follows, to-wit:)

GEORGE DUNLAP,

being first duly sworn to testify the truth, the whole truth and nothing but the truth, testified as follows:

Direct Examination

By Mr. McGan:

Q. Will you state your name, please?

A. George Dunlap.

Q. And where do you live, Mr. Dunlap?

A. 2301 East Madison.

Q. Seattle, Washington? A. Yes, sir.

(Deposition of George Dunlap.)

Q. And how long have you lived there, Mr. Dunlap? A. About 24 years.

Q. Were you living there in 1922?

A. Yes, sir.

Q. Did you know Mr. William V. Mahoney?

A. Yes, sir.

Q. And when did you become acquainted with him?

A. Well, when he moved in there, I think on December 6th, 1922.

Q. He moved in where?

A. Into the apartment house, 2301 East Madison.

Q. He moved into that apartment house?

A. Yes, sir.

Q. And when was that?

A. December 6th, 1922. [280]

Q. And how long did he live there?

A. Probably about a year and seven months.

Q. Or until 1924, is that right?

A. Yes, sir.

Q. You never knew him before he came there?

A. No, sir.

Q. And have you seen him since?

A. No, I have not.

Q. What was his business, if you know?

A. He was going to school.

Q. Where?

A. At the University of Washington.

Q. Did you have occasion to talk with him once in awhile?

(Deposition of George Dunlap.)

A. Oh, I talked to him a little; not very much.

Q. Did you see him frequently around the place?

A. Oh, I would see him once in awhile.

Q. Did you talk to him occasionally, too?

A. Oh, yes, I have talked to him occasionally.

Q. State whether or not you noticed any peculiarities in his actions? A. No, I didn't.

Q. State whether or not he talked to you in an intelligent manner? A. Yes.

Q. (By Mr. McGan): Were you in his apartment?

A. Yes, I guess I have been in it; yes, I have been in it.

Q. State whether or not you ever observed him around his home? A. Well, no.

Q. You say he was going to school?

A. Yes, he was going to school, and if I had any occasion to go into the apartment or to do anything, I would go in there during the day. I do not remember only once or twice of being in the apartment. [281]

Q. You may state whether or not you know whether he was married at the time he lived in your apartment? A. Yes.

Q. Was Mrs. Mahoney living there, too?

A. Yes, sir.

Q. You may state whether or not he took an interest, an apparent interest, in his surroundings?

A. Why, yes, ordinarily he did. He was going to school from there.

(Deposition of George Dunlap.)

Q. You may state whether or not you noticed anything about him that would lead you to believe that he was mentally upset? A. No.

Q. Do you know whether or not he was ill at anytime during the period he lived at your house?

A. No, not that I know of.

Q. He was about the house every day, was he?

A. Yes, he was around there.

Q. (By Mr. McGan): You may state now, if you remember, how frequently you saw him around there?

A. Oh, that would be awfully hard to say. It has been so long ago that it is pretty hard to recall back that far.

Q. At that time, Mr. Dunlap, if you recall, you may state whether or not you were around the apartment all the time?

A. Yes, I was around there all the time.

Q. You were not employed there?

A. No. I was—my wife and I were running the place.

Q. You may state whether or not you observed his appearance?

A. Why he appeared just like anybody to me.

Q. Well, perhaps I can reframe the question. State whether or not he was neat in appearance?

A. Yes.

Q. Apparently clean about his person? [282]

A. Yes, he seemed to be.

Q. You may state, if you can, whether, in your opinion, he was sane or insane.

(Deposition of George Dunlap.)

Q. (By Mr. McGan): State whether, in your opinion, William V. Mahoney was sane during the period of time you knew him in 1922, '23, '24?

A. Yes.

Q. (By Mr. McGan): You said, "Yes." Now, what do you mean, Mr. Dunlap, by that?

A. He was sane, yes.

Mr. McGan: Very well. You may cross examine.

Cross Examination

By Mr. Meindl:

Q. Mr. Dunlap, how long did you run that apartment house?

A. Well, I have been there about 24 years.

Q. How many apartments are in it?

A. 23.

Q. How many tenants are there in the apartment house at the present time?

A. Well, there are two in most of the apartments. Well, there is one apartment that has four in; one, three; another one with the wife and husband and three kids; and another couple has a baby.

Q. Would that be between fifty and sixty tenants in the apartment house at the present time?

A. It would be around fifty, yes.

Q. Could you give us an estimate as to how many tenants have been in the apartment house since the year 1922?

A. No. No, I could not.

Q. Speak a little bit louder, please.

(Testimony of George Dunlap.)

A. No, I could not give you any estimate. They come and go. I would not have any idea.

Q. You mean they stay *while* and then leave, is that it? [283]

A. Yes. Oh, we have some families that have stayed there 15 or 16 years. One stayed there 20 years. There is a part of them that go in and out.

Q. Over the course of years there would be several hundred that have lived in that apartment house since 1922?

A. No, it would not be anything like that.

Q. Of course, you can't remember each and every person that has lived in your apartment house real well? A. Oh, yes, I can——

Q. (By Mr. Meindl): Now, you may answer, Mr. Dunlap.

A. Yes, I can remember most all of them.

Q. Could you tell us how they looked and what their names are; that is, of all the tenants that lived in the apartment house?

A. Oh, I don't know that I can recall all of them; I would not say that.

Q. How many floors are there in the apartment?

A. Three.

Q. Which apartment did Mr. Mahoney live in?

A. Apartment 4 on the lower floor.

Q. I believe you testified in direct examination that you saw him just once in awhile, is that it?

A. Yes, sir.

Q. Did you ever see him out at the school?

A. No. No, I never went out to the school.

(Deposition of George Dunlap.)

Q. All you know about the school was what someone told you, then?

A. Yes, and what he came in and told me he was going to school.

Q. From what Mr. Mahoney and other people told you, is that it? A. Yes.

Q. From your own knowledge, you don't know whether he went to school or not, then?

A. He said he was going; that is all I know. [284]

Q. From your knowledge, however, not having seen him?

A. No, I never saw him there, no.

Q. You don't know how frequently he was absent or anything else, on that occasion?

A. No, that I would not know.

Q. You wouldn't know how he got along in school, either? A. No.

Q. Or what interest he had in the school?

A. No, I don't know.

Q. I believe you said you were in their apartment a couple of times—in the Mahoney apartment a couple of times that you can remember?

A. Yes. I think I was in there a time or two.

Q. Mr. Mahoney was not present at that time?

A. No. Sometimes I would go in and fix a faucet or something like that.

Q. I take it, Mr. Dunlap, you did not have much occasion to observe Mr. Mahoney? A. No.

Q. I believe you testified that you did not notice Mr. Mahoney very much?

(Deposition of George Dunlap.)

A. No. I saw him around. I did not pay much attention to him, no.

Q. The same as other tenants? A. Yes.

Q. As far as you know Mr. Mahoney may have been ill days or weeks at a time without you knowing about it?

A. Oh, he could have been, yes.

Q. You are not a doctor, are you, by *an* chance, Mr. Dunlap? A. No, sir.

Q. In giving an opinion as to a man's mental condition, you are just basing it upon what you observed?

A. My own opinion, yes, but I have noticed him.

Q. As far as you know, he may have been upset without your [285] seeing him?

A. He could have been. As far as I could see, why, he appeared to be all right.

Q. I suppose after all these years it is a little bit difficult to remember all these facts definitely?

A. Oh, yes, it is.

Mr. Meindl: That is all.

Redirect Examination

By Mr. McGan:

Q. Mr. Dunlap, you stated in your cross examination that Mr. Mahoney lived on the lower floor in Apartment No. 4? A. Yes.

Q. And in relation to your own apartment number, where is that situated?

(Deposition of George Dunlap.)

A. Well, I was in apartment 8 on the second floor at that time. Now, I am in apartment No. 12 on the second floor.

Q. And you did not live on the same floor with Mr. Mahoney? A. No.

Q. Mr. Dunlap, you stated that Mr. Mahoney talked to you about his schooling.

A. Well, he told me that he was going to school. That is about all. He said the government was sending him to school.

Q. Did he tell you that he was going to school all the time that he was in the apartment house?

A. No, he never told me that he was going, of course,——

Mr. McGan: That is all.

Mr. Meindl: That is all. [286]

JAMES EDWARD MAHONEY,

was duly sworn to testify the truth, the whole truth, and nothing but*h* the truth, testified as follows:

Direct Examination

By Mr. McGan:

Q. Will you state your name?

A. James Edward Mahoney.

Q. Where do you reside, Mr. Mahoney?

A. 124 Warren Avenue.

(Deposition of James Edward Mahoney.)

Q. Is that Seattle, Washington?

A. Seattle, Washington.

Q. How long have you lived in Seattle, Mr. Mahoney?

A. Off and on since '37. That is, I first lived here in 1937.

Q. Are you acquainted with William V. Mahoney? A. Yes, sir.

Q. Is he any relative of yours?

A. A brother.

Q. He is your brother?

A. My brother, yes.

Q. Do you recollect the time when your brother was discharged from the service?

A. Yes, I do.

Q. Where were you residing at that time?

A. Minot, North Dakota.

Q. How long after that did you reside in Minot?

A. About two years.

Q. Was Mr. William V. Mahoney around Minot all that time?

A. After he was discharged, not all of that time, I do not believe. No, he wasn't there the entire time that I was, because he left before I did.

Q. State, if you know, where William went from Minot?

A. He came to Seattle to attend school.

Q. Did you live at the same place your brother did in Minot? [287] A. At which time?

Q. In 1922? A. In 1922, no.

Q. Or before that?

(Deposition of James Edward Mahoney.)

A. I did when he was home on the furlough.

Q. But when he came home when he was finally discharged, did you live at the same place he did?

A. No.

Q. State why that was?

A. He was married and lived in an apartment, I believe, at the time.

Q. He was not living at the family home?

A. Our family home was broken up at the time, and I lived in an apartment house.

Q. How frequently did you see your brother during this first period?

A. During the furlough?

Q. No, during the first period after the discharge?

A. Oh, I would see him two or three times a month, maybe oftener.

Q. Did you visit in his home occasionally?

A. No, not other than just to go to see him about something.

Q. State what you noticed, if anything, about his mental condition at that time.

A. Well, from what I would observe, it was—at that time, I would say that it was due to the stress that he was in.

Q. Now, will you just state what you noticed?

A. Well, he was irritable and very nervous and very quarrelsome, I would say.

Q. Did he get out of patience with you, Mr. Mahoney? A. Yes, he did with me.

(Deposition of James Edward Mahoney.)

Q. And did that ever occur before he went in the Army?

A. Not—no, I would not say that it occurred to the same [288] effect, other than just a little family quarrel then; but occasionally. But after he got out, why, he was hard to get along with, I would say.

Q. Do you know whether or not he was employed during that period of time?

A. He was employed at the Northern States Power, I believe is the name.

Q. Did you ever see him at his work?

A. No, I have never seen him at his work.

Q. Did you see him on the street? A. Yes.

Q. How was his appearance?

A. His appearance was neat.

Q. Was he neat about his person?

A. Yes, he was.

Q. How about his conversation, if you noticed anything about that?

A. It was rambling, I would say.

Q. Will you just state for the record what you mean by that?

A. I mean that he would not talk on one subject. He would ask a question. Perhaps before you would answer the question, he would ask you another one on something else.

Q. State, if you can, whether you observed that there were other times when he would not do that?

A. Well, I don't believe there was. He was al-

(Deposition of James Edward Mahoney.)

ways—he always seemed to be the same, practically the same.

Q. How old was your brother William at that time? A. I would say about 24.

Q. State whether or not you formed an opinion as to whether your brother's condition was normal or abnormal at that time?

A. I had really never formed the opinion at that time, [289] whether he was or not.

Q. Have you formed an opinion since?

A. No, I really haven't.

Q. You do not have any opinion on that?

A. No, I haven't seen him recently.

Q. State whether or not, if you know, your brother was in any trouble with the law?

A. Not to my knowledge.

Q. Or any other kind of trouble that you know of? A. He got into a lots of quarrels

Q. But aside from the quarrels?

A. Well, he would get into a little fight occasionally.

Q. But aside from that?

A. That is all. Nothing that I know of.

Q. Now, when did you see your brother next, Mr. Mahoney, after he left Minot?

A. The next time I saw him was in about 1923.

Q. Where was that?

A. In Portland, Oregon.

Q. And how did that happen?

A. I was living there at the time.

Q. Did he come to visit you?

(Deposition of James Edward Mahoney.)

A. No. He just came down to—I don't know for what purpose he came down from Seattle. Maybe some day he would stay a day and maybe he would stay longer.

Q. He came several times, did he?

A. Yes, he came down several times.

Q. Did you observe his mental condition at that time, Mr. Mahoney?

A. Yes, I observed it—that he was practically the same in 1920.

Q. When did you last see him?

A. The next time I saw him in 1927, I believe was the year.

Q. And where? [290]

A. At Devil's Lake, North Dakota.

Q. Was he living there then?

A. No, he was living in Portland.

Q. How did he happen to come to Devil's Lake?

A. He came down there to visit me for a couple of days.

Q. Did he come alone?

A. Yes, he was alone.

Q. Do you know how he got there?

A. I believe he came on the train.

Q. Did you talk with him at that time?

A. Yes, I talked with him.

Q. State whether or not you noticed any change in his condition then?

A. No. I think he was the same as he was in 1922, practically.

Q. And when was the last time you saw him?

(Deposition of James Edward Mahoney.)

A. In 1937.

Q. And where did that occur?

A. On the street in Portland, Oregon.

Q. How long did you talk to him?

A. About five minutes.

Q. You hardly had an opportunity to observe his condition then? A. No, I didn't.

Q. But you were interviewed, were you not, by a special agent for the Federal Bureau of Investigation with reference to this matter?

A. Yes, I was.

Q. When was that, Mr. Mahoney?

A. About three weeks ago.

Q. That would make it about the 26th day of May, wouldn't it, Mr. Mahoney?

A. Approximately, yes.

Q. Now, state whether or not—— [291]

Mr. McGan: I will ask that this he marked as an exhibit.

(A letter, dated Seattle, Washington, May 26, 1942, signed James E. Mahoney, was marked Defendant's Exhibit No. 1.)

Q. (By Mr. McGan) Mr. Mahoney, I will hand you what has been marked as Defendant's Exhibit No. 1 for identification, which consists of two pages in handwritten matter, in longhand, and ask you whose signature appears on the second page.

Mr. Meindl: Just a moment, before you answer. I object to these proceedings not being proper, and on the further ground that they are irrelevant and

(Deposition of James Edward Mahoney.)

immaterial and an attempt to impeach his own witness.

Q. (By Mr. McGan) Is that your signature appearing on that second page? A. Yes, it is.

Q. Is that a paper that you made to the Federal Bureau of Investigation?

A. This is the statement that he wrote out.

Q. That you signed?

A. I signed it for him.

Q. And you read that over before you signed it?

A. Yes, I read it over.

Mr. Meindl: Let the record show my objection. The plaintiff objects to Defendant's identified Exhibit No. 1 upon the ground that it is not a proper document for the purpose of refreshing recollections; that it is not made at a time when the matter sought to be elicited occurred, or even in close proximity thereto; further, the only possible use that said document could be used for would be for impeachment purposes, and there has not been any foundation laid for said purpose, and, further, the witness is the Government's own witness. [292]

Q. (By Mr. McGan) I will ask you, Mr. Mahoney, if you have an opinion now as to whether your brother was sane or insane at the time he was home, right after his discharge from the Army.

Mr. Meindl: I object to the question upon the ground that the question has been asked once, and the witness testified that he had no opinion.

A. I have formed no opinion.

Mr. McGan: You may cross examine. [293]

Mr. Meindl: Now I ask the Court to be permitted to read into evidence this statement, Exhibit 8-A.

Mr. Meindl: Our same objection, your Honor. It is not inconsistent with the cross-examination. We reserve our same objection.

The Court: If it is not inconsistent with the cross-examination I will not permit you to read it.

Mr. McGan: There are statements here that are not inconsistent, your Honor, and there are statements that are inconsistent.

The Court: The way that this is offered, the Court must necessarily treat the cross-examination as the direct, it being offered by you now. Counsel for the defendant has a right to read the written statement which is conflicting therewith, not for the purpose of giving evidence of the facts which are in the written statement, but to show the credibility the jury should give to the witness, and on that basis if there are inconsistent statements I will permit you to read it, although I will not permit it to go in evidence. It will stand on the same basis as the other testimony in the deposition. Ladies and Gentlemen, this which is about to be read is a written statement of the same witness. You are not to take this as evidence of the facts contained in the deposition, but you may consider it in determining the credibility that you should give this witness. [294]

(The written statement, signed by James E. Mahoney, Defendant's Pre-trial exhibit No.

8-A, was then read to the jury by Mr. McGan; said statement is in words and figures as follows, to-wit:)

DEFENDANT'S PRE-TRIAL EXHIBIT

No. 8-A

Seattle, Washington
May 26, 1942

I, James E. Mahoney, make the following voluntary statement to Fred R. Elledge whom I know to be a Special Agent of the Federal Bureau of Investigation. No threats or promises of reward have been made and I make this statement freely knowing that I do not have to make the same.

I moved to Portland, Oregon in May, 1922, when I resided until January 1924. During this time my brother, William V. Mahoney was in attendance at school in Portland and Seattle. I saw him every two to three months at which time I talked to him. His mental condition at this time was apparently normal with the exception of traces of irritability and nervousness and jumping from one subject to another in his conversation.

I returned to Devil's Lake, North Dakota upon leaving Portland and while residing in the Baird Block in Devil's Lake I was visited by my brother William during the summer or early fall of 1927. He stated at this time that he had made a trip to Minot, North Dakota and made the trip to Devil's Lake to see me. He stated that he had made the

trip alone and his wife was in Portland, Oregon. William stayed at a hotel in Devil's Lake and I visited with him on two different evenings. His mental condition at this time was about the same as when I last saw him in 1924. He displayed signs of nervousness and except for jumping from one subject to another his conversation appeared rational and normal.

I did not see nor hear from William again until 1937 when I saw him for about 15 minutes on the street in Portland, Oregon. My contact with him at this time was so brief I could form no accurate opinion as to his mental ocndition.

I have read the above statement consisting of one page beside this one and the same is true to the best of my knowledge and I have initialed the first page and signed my name to this one.

Signed JAMES E. MAHONEY

Witnesses

Fred R. Elledge,
Special Agent F.B.I.
508 N. S. Court House Bldg.,
Seattle, Wash.

Edgar L. Robbins,
Special Agent F.B.I.
Seattle, Washington [295]

Mr. Dillon: Call Mrs. Peter Swanson.

MRS. P. SWANSON

was thereupon produced as a witness in behalf of the defendant herein, and, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dillon:

Q. Will you please state your name again?

A. Mrs. Peter Swanson.

Q. And where do you reside?

A. At 2202 Northeast Flint.

Q. Do you know William V. Mahoney?

A. Yes, sir.

Q. For what period of time have you known him? A. Since 1922.

Q. When you first met him in 1922 what was he then doing to the best of your recollection?

Q. Not a thing.

Q. Did he work at any time while you knew him there in 1922 and '23? A. No.

Q. And how long have you known him since 1922? Until the present time? A. Yes, sir.

Q. And how closely were you associated with him between 1922 and 1930, say? How often have you seen him?

A. Well, quite often. Part of the time he lived with me.

Q. What years did he live with you?

A. I can't say exactly.

Q. To the best of your recollection?

A. From about '24, I should judge, to some time in '30.

(Testimony of Mrs. P. Swanson.)

Q. During that time did you notice that he drank excessively of alcohol?

Mr. Bynon: That is objected to as leading and improper. [296]

A. At some times.

Mr. Bynon: Wait a minute—pardon me.

The Court: She has answered. I will allow the answer to remain.

The Witness: At some times.

Q. (By Mr. Dillon) How often?

A. I couldn't say.

Q. What is the best of your recollection?

A. I just can't say.

Q. Did he drink heavily?

Mr. Meindl: If your Honor please, we object to that as leading.

The Court: Sustained.

Q. (By Mr. Dillon) Can you recall at this time the extent of his drinking? A. No.

Mr. Dillon: If your Honor please, the Government is taken by surprise with this witness. I would like to have her identify her signature to a statement she made on June 17, 1942, and ask her concerning it.

The Court: Yes.

Mr. Dillon: May I have it identified as a Government's Exhibit?

The Court: Is this a pre-trial exhibit?

Mr. Dillon: No, your Honor, it is for the purpose of impeaching the witness.

Mr. Bynon: I object to it, your Honor.

(Testimony of Mrs. P. Swanson.)

Mr. Dillon: As I say, we were taken by surprise and there was no occasion of it on pre-trial because we had the statement of the witness and thought she would testify according to it.

The Court: It won't be received in evidence if it is not offered at pre-trial.

Mr. Dillon: But, your Honor, wouldn't it come under the [297] exception?

The Court: No.

Mr. Dillon: If the Government is taken by surprise and had no reason to anticipate such a contingency would we not be able to use it?

The Court: No, the theory is that you are not to keep any cards up your sleeve; you are supposed to display at pre-trial all documents that you had that might be used at the trial.

Mr. Dillon: I appreciate that, your Honor, but usually with your own witness you wouldn't put any statement in because you would expect them to testify in keeping with the statements they had made. It wouldn't be holding anything back or anything like that. It is completely at variance with the statement she gave in May, 1942.

The Court: The Court has ruled, and the last remarks are stricken from the record. Don't try to tell this jury what is in that statement.

Mr. Dillon: I said nothing about what is in the statement, your Honor.

The Court: Take your exception and proceed.

Mr. Dillon: May I make an offer of proof, your Honor?

(Testimony of Mrs. P. Swanson.)

The Court: Yes. Not in the presence of the jury. Keep it until we take a recess, and you can make any offer you want to.

Q. (By Mr. Dillon) When you saw Mr. Mahoney during this time did he act and appear to you as a normal person?

A. As a rule he did.

Mr. Dillon: That will be all.

Mr. Meindl: No cross-examination.

The Court: That is all.

(Witness excused.) [298]

EDGAR E. WILLIAMS

was thereupon produced as a witness in behalf of the defendant herein, and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dillon:

Q. Please state your name again, sir.

A. Edgar E. Williams.

Q. Where do you reside?

A. At 76 Northeast Russell.

Q. During the years 1929 to 1931 where did you reside? A. 2337 Southwest Sixth.

Q. And were you in business at that time?

A. Yes, sir.

Q. In what type of business?

A. Grocery, lunch, and delicatessen.

(Testimony of Edgar E. Williams.)

Q. During that period did you become acquainted with one William Mahoney?

A. Yes, sir.

Q. And did you have occasion to see him during that period? A. Yes, sir.

Q. At the time that you saw him and observed him did you note anything mentally wrong or abnormal about him? A. No, sir.

Q. On all occasions? A. On all occasions.

Mr. Dillon: That is all.

Mr. Meindl: No cross-examination.

(Witness excused.) [299]

CREON G. FERRY

was thereupon produced as a witness in behalf of the defendant herein, and, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dillon:

Q. What is your occupation, Mr. Ferry?

A. Detective in the Portland Police Department.

Q. Do you know one William V. Mahoney?

A. Yes, sir, I do.

Q. How long have you known him?

A. Oh, I think I first met him around 1927 or '8.

Q. In the years 1927, '28, '29, '30, '31, '32, '33, and '34 did you have occasion to see Mr. Mahoney intoxicated?

(Testimony of Creon G. Ferry.)

A. Well, under certain conditions he probably had more to drink than he should have. I have talked to him when he would be in that condition. Normally he could navigate or go home, but I mean I said Hello and talked to him.

Q. How many times approximately would you say you have seen him in that condition during those years?

A. Oh, possibly I have talked to him and met him in some tavern in the south and during those years possibly on an average of two or three times a month, contacted and saw him on the street.

Mr. Dillon: That is all. Thank you.

Cross-Examination

By Mr. Bynon:

Q. Mr. Ferry, you do not intimate by your presence here that you have ever known Mr. Mahoney as a law breaker, do you, or anything like that?

A. No, I never had any occasion to investigate him on any crimes.

Q. And you have been a member of the Portland police force for many years, have you not? [300]

A. 1912.

Q. I suppose perhaps you know Mr. Mahoney like you do many others. A. That is right.

Q. Like you know me, for example?

A. Yes, sir.

Q. And many other of your acquaintances?

A. Yes.

Q. Did you ever know Mr. Mahoney well

(Testimony of Creon G. Ferry.)

enough to know that he had his back broken while he was in the Army in France?

A. No, I never talked to him about any of his service in the Army. He has talked to me a good many times about things that were happening at the time or during that period of time, but not what he had been through while he was in the service.

Q. I just wanted to clear up one thing, Mr. Ferry. You do not mean to imply by your testimony, do you, that you ever had any trouble with Mr. Mahoney?

A. No, I never had any trouble with him. I don't mean that.

Q. One last thing, Mr. Ferry. Do I understand you to testify that you saw him sometimes two or three times a month? Was that your testimony?

A. Yes, I saw him on that average sometimes, sometimes more than that, that is, not every month, but some months I might have saw him on the average of every day, and maybe I wouldn't see him again for three or four months. It all depends if I was in that particular locality or district.

Q. I take it that you have no particular reason to remember when or where you saw him.

A. Oh, no, no reason for that.

Q. You testified that on occasions you saw him when he had something to drink?

A. Yes, sir.

Q. Now is it true that you saw him many times when he didn't [301] have anything to drink as far as you could tell?

(Testimony of Creon G. Ferry.)

A. Yes, I saw him many times when he didn't have anything to drink. Well, he was all cleaned up and dressed up, and he was most all the time whether he was drinking or not.

Mr. Bynon: That is all.

Mr. Dillon: That is all. Thank you.

(Witness excused.) [302]

E. HAGLAND

was thereupon produced as a witness in behalf of the defendant herein, and, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dillon:

Q. Will you please state your position?

A. Sir?

Q. What is your work?

A. Police officer.

Q. Any special type?

A. Wagon driver down there at Second and Oak, partol wagon driver.

Q. Do you know one William Mahoney?

A. Yes, sir.

Q. In the years 1934 to the present time would you be able to approximate the number of times that you have arrested Mr. Mahoney for intoxication and disturbance of the peace and driven him to the station?

(Testimony of E. Hagland.)

A. Well, I wouldn't say that I arrested the person myself, but I have seen him about half a dozen times that I contacted and saw him, and better.

Mr. Dillon: That is all. Thank you.

Cross-Examination

By Mr. Bynon:

Q. Mr. Hagland, have you had experience and training in distinguishing epilepsy from other types of——

A. (Interrupting): I have seen a few cases.

Q. Do you recall having seen Mr. Mahoney in an epileptic seizure or in the aftermath of one?

A. Well, he has been in pretty bad shape a few times down there. I couldn't tell much what it was.

Q. You didn't know whether it was epilepsy or not?

A. Well, he had been drinking. [307]

Q. Mr. Hagland, I want you, please, to answer my question. Are you able to tell this jury whether or not——

A. (Interrupting): Yes, I can tell the difference between a drunken man and an epileptic. I have seen both.

Q. Well, I will ask you again whether or not on any of these occasions, these half a dozen times you have testified to, Mr. Mahoney was suffering from an epileptic seizure or the residual or aftermath of epilepsy?

A. No, he wasn't epileptic when we took him in, because we leave that to ambulances, cases like that.

(Testimony of E. Hagland.)

Q. You are the driver, aren't you?

A. Driver and back end both; we change off.

Q. Are you aware that Mr. Mahoney has those epileptic seizures?

A. I have heard it, yes. I have heard him telling it to us down there.

Mr. Bynon: That is all.

Mr. Dillon: That is all, Officer. Thank you.

(Witness excused.) [308]

M. REKDAHL

was thereupon produced as a witness in behalf of the defendant herein, and, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dillon:

Q. Officer, what work do you do?

A. What is it?

Q. What work do you do?

A. I drive the police patrol.

Q. Do you know one William Mahoney?

A. Yes.

Q. From the year 1934 up to this year how many times approximately would you say that you picked up Mr. Mahoney for disturbing the peace and drove him to the jail?

A. Well, it would be awful hard to say the exact number of times. We hauled him I suppose in the

(Testimony of M. Rekdahl.)

last seven years or so about ten times anyway; around that, ten or twelve times, maybe. I have no record of that.

Mr. Dillon: That is all. Thank you.

Cross-Examination

By Mr. Bynon:

Q. Mr. Rekdahl, did you know that in this first year Mr. Dillon mentioned, 1934——

A. (Interrupting): I can't hear you.

Q. Did you hear me? You shook your head.

A. I couldn't hear you.

Q. I will speak louder. I want to ask you this question, Mr. Rekdahl: Did you know that in 1934 Mr. Mahoney here was committed to the Oregon State Hospital for the insane?

A. No, I didn't know that.

Q. Did you know that Mr. Mahoney had epileptic seizures? A. What?

Q. Do you have trouble with your hearing, Mr. Rekdahl? [309] A. Yes, I have.

The Court: You may approach if you wish, Counsel.

Mr. Bynon: If your Honor will permit me I think I can make myself heard.

Q. Do you know now, Mr. Rekdahl, that Mr. Mahoney suffers from epileptic seizures?

A. I don't know that he does. I have heard he has, but I never saw him have one, so I wouldn't know.

Mr. Bynon: I think that is all.

(Testimony of M. Rekdahl.)

Mr. Dillon: That is all. Thank you.

(Witness excused.) [310]

CLARK BAILEY

was thereupon produced as a witness in behalf of the defendant herein, and, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dillon:

Q. What is your business, Mr. Bailey?

A. I have an ice cream shop in Beaverton, Oregon.

Q. And where are you located?

A. Beaverton, Oregon.

Q. Do you know one William Mahoney?

A. Yes, sir.

Q. When did you first meet him?

A. Oh, about 1928, I guess it was. I don't remember exactly.

Q. At the time you met him in 1928 did you note anything from his physical appearance or actions that were abnormal?

A. No, I don't think so. I heard that he had sort of seizures of some kind.

Mr. Dillon: Well, I want to ask that that be stricken, because we know he did.

Q. Did you ever see him in a condition of insobriety, that is, not sober?

A. Yes, I guess I have.

(Testimony of Clark Bailey.)

Q. And in that condition what was his behavior?

A. Well, he might have been a little bit loud at times, or belligerent, I would say.

Mr. Dillon: That is all. Thank you.

Mr. Bynon: No cross-examination.

(Witness excused.) [311]

A. J. McCAMMEL

was thereupon produced as a witness in behalf of the defendant herein, and, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dillon:

Q. What is your profession, Doctor?

A. Practice of medicine and surgery?

Mr. Bynon: We will admit the Doctor's qualifications, general qualifications.

Q. (By Mr. Dillon): Doctor, I will hand you through the bailiff Pre-Trial Exhibit 1 marked for the defendant and introduced by plaintiff, calling your attention to the examinations of April 9, 1921 and August 18, 1921, and ask you if that is your signature attached to those examinations?

A. Yes, that is my signature.

Q. Doctor, have you any independent recollection of one William Mahoney?

A. No, I have not.

Q. And what are those two papers that I have called your attention to?

(Testimony of A. J. McCammel.)

A. They are copies of—or rather reports of examination.

Q. Medical examinations?

A. Medical examinations that I made for the Bureau of War Risk Insurance of the United States Public Health Service, the Federal Board for Vocational Training.

Q. You didn't mean the Bureau of War Risk Insurance? What does it state on top?

A. It states on top "U. S. Public Health Service, Bureau of War Risk Insurance, Federal Board for Vocational Training."

Q. My fault. Using the first examination to refresh your memory, will you state of what your examination consisted and what were your findings?

A. It was a general examination, and my findings were: The [312] first lower right molar missing. Some teeth decayed. Varicose veins, slight bilateral. Chest negative. Scar 8½ inches long over spine in the lower dorsal and lumbar region. Stiffness of spine. X-ray of spine shows slight displacement between the 11th and 12th dorsal vertebra and fracture of 12th dorsal and 1st and 2nd lumbar vertebra.

Q. And what was your diagnosis, Doctor?

A. Diagnosis: Fracture of vertebra simple, 12th dorsal, 1st and 2nd lumbar. Dislocation of vertebra, 12th.

Q. Would you explain as briefly as you can in language that we laymen could understand just

(Testimony of A. J. McCammel.)

what those findings consisted of and the interpretation of your diagnosis?

A. Well, that he had had a fracture low down in the back between the 12th dorsal—the 12th dorsal vertebra was fractured—that is the one that carries the last rib, and then the 1st and 2nd lumbar vertebra, the two directly below that. He had had a fracture of those which had apparently healed with a slight displacement between the 11th and 12th dorsal vertebrae.

Q. At that time, Doctor, did you make any nervous or mental examination?

A. Yes, I looked him over, gave him a general looking over, and reported just what I found that was abnormal.

Q. And was there anything there to that effect?

A. No.

Q. Doctor, basing your opinion as a physician and on the findings of your report of that date—will you state the date again, please?

A. The date this——

Q. (Interrupting): At the top, is it not?

A. Yes, it is at the top. April 9, 1921.

Q. On April 9, 1921 would Mr. Mahoney without injury to himself or to his health have been able to carry on the occupation of a clerk? [313]

A. Yes.

Q. A meter reader? A. Yes.

Q. A janitor? A. Yes.

Q. If qualified, a bookkeeper and accountant?

A. He would be able to perform any light work.

(Testimony of A. J. McCammel.)

Q. You mean by that mainly sedentary work?

A. Not entirely sedentary, but where there was not too much heavy lifting or exertion.

Q. Doctor, will you turn to your next examination? What is the date of that?

A. August 18, 1921.

Q. And was there any difference in your findings or diagnosis as compared to the previous examination in April?

A. I don't see any difference. The only difference I see in the report is, in the April report I had made this note at the bottom of it: "This man's condition is improving and with vocational training should be able to handle any clerical or similar work." There is nothing about that on the other. Otherwise the examination and the diagnosis are practically the same.

Q. And at that time in August he could have carried on without injury to himself or his health the same occupations that I narrated to you in reference to the previous examination? A. Yes.

Q. And was your examination of the nervous and mental the same character as the previous?

A. Yes.

Mr. Dillon: You may cross-examine.

Cross-Examination

By Mr. Bynon:

Q. Doctor, where are you living, please? [314]

A. Chiloquin, Oregon.

Q. That is down in Klamath County?

A. Yes.

(Testimony of A. J. McCammel.)

Q. How long have you been there?

A. I have been there about nine months.

Q. Are you employed by the Government?

A. Part time.

Q. Were you employed by the Government at any previous time before going to Chiloquin?

A. Yes.

Q. In what capacity were you employed by the Government?

A. I was in the United States Army Medical Service during the World War, and at the time that I made this examination I was employed part time by the Public Health Service, which was afterwards the Veterans Bureau.

Q. Where were you living at that time?

A. At Minot, North Dakota.

Q. Were you engaged in general practice there?

A. Yes.

Q. Do you specialize in any branch?

A. No, I did general practice.

Q. You were not specializing at that time in any particular field? A. No.

Q. This examination, I take it, was made with anticipation that Mr. Mahoney would go into some vocational training by the Government, was it not?

A. That I believe was the object of the examination.

Q. Well, that is why he came to you to be examined, wasn't it, Doctor? That was a condition precedent to his going into vocational training under the Government?

(Testimony of A. J. McCammel.)

A. I can't say as to that. I would get a request for an examination and I would make the examination and send it in to [315] the Government. I was examining them for treatment; I was also treating them, some of these returned soldiers, keeping them in the hospital there at Minot and treating them, so that I was examining them for all these different things.

Q. Well, I remember you called Mr. Dillon's attention to the fact that this report which was just before you was for the Federal Board of Vocational Education, so I assumed that you examined him as a step preparatory to going into some kind of vocational training.

A. I believe that is what he was sent in for.

Q. And you took this history yourself, I assume, which appears here about his long period of hospitalization? A. Yes.

Q. You knew he had had these fractures of his spinal column?

A. Yes, I knew from his history.

Q. That laminectomy performed that you spoke of*f*, what is that, Doctor?

A. That is an operation on the spine. There are arches that go around and enclose the spinal cord. Those are the laminae, and part of that was cut out, I presume to straighten his spine.

Q. Is that the reason why you found that scar in his back?

A. That was the scar of that operation, yes. He had been operated on.

(Testimony of A. J. McCammel.)

Q. Yes, I understand it. You say his back is still stiff and he is unable to work?

A. I believe that is his history as he gave it to me.

Q. Doctor, at that time you were not doing any neuropsychiatry, were you? A. I was not.

Q. I notice this form that you had before you says, "For neuropsychiatric examination see paragraph 11F", and no neuropsychiatric examination was made, was it?

A. Just the general examination. [316]

Q. Well, to be perfectly frank, Doctor, you don't want this jury to believe that you made any neuropsychiatric examination of him at that time, do you? A. No, I do not.

Q. Thank you. I take it that your answers to my questions respecting the first examination are the same as you would make if I put like questions to you respecting the second examination made a few months later.

A. The conditions seemed about the same in both examinations, as I remember.

Q. And your examinations of him were the same, I take it, Doctor? A. Yes.

Q. May I ask you too if this second examination was made for the same purpose, the Federal Board of Vocational Education?

A. I believe it is on the same blank, and so far as I know was made for the same purpose.

Q. You have no independent recollection of Mr. Mahoney, as I remember your testimony.

(Testimony of A. J. McCammel.)

A. I have not.

Q. In other words you wouldn't know if this was the same man as you examined or not?

A. I couldn't say. It was over twenty years ago.

Mr. Bynon: That is all.

Redirect Examination

By Mr. Dillon:

Q. Doctor, counsel has drawn your attention to the fact that no neuropsychiatric examination was made. If there had been any abnormalties, nervous or mental, observed by you during your examination then you would have recommended a neuropsychiatric examination? Is that not correct?

A. I would.

Mr. Dillon: That is all.

(Witness excused.) [317]

G. I. BIRCHFIELD

was thereupon produced as a witness in behalf of the defendant herein, and, having first been duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Dillon:

Q. Will you please state your profession, Doctor? A. Beg pardon?

Q. What is your profession?

A. Physician and surgeon.

Q. What school are you a graduate of?

(Testimony of G. I. Birchfield.)

A. St. Louis University.

Q. What year? A. 1916.

Q. Have you practiced your profession since that time? A. Yes, sir.

Q. Where are you now located?

A. Seattle, Washington.

Q. In January 1924 where were you located?

A. Seattle, Washington.

Q. Doctor, I will ask the bailiff to hand to you part of the physical examination of William Mahoney made January 18, 1924, which is part of Defendant's Pre-Trial Exhibit No. 1 introduced by plaintiff. Calling your attention to Page 2 of that examination I would ask you if that is your signature attached thereto.

A. Yes, sir, that is my signature.

Q. Do you have any independent recollection of Mr. Mahoney, Doctor? A. No, I do not.

Q. Then using that examination report to refresh your memory, will you state of what the examination consisted and what your findings were?

A. Well, this examination, I can tell you very directly, was [318] the beginning in 1924 of these examinations. These examinations were made to determine the disability of the men, and three men were put on them. I happened to be the chairman of this board. They were to make a thorough examination so that everybody could be checked up thoroughly and not leave anything undone.

Q. There were two other doctors to that board?

A. There were, yes, sir.

(Testimony of G. I. Birchfield.)

Q. Their signatures are attached thereto?

A. They are.

Q. Would you please state who they are?

A. R. T. Hopkins and A. C. Feaman. That is their signature; I could swear to that, I have seen them so many times.

Q. Then would you state, Doctor, what your findings were?

A. Do you want the full physical examination or not?

Q. Well, the important findings, Doctor. You might give them briefly.

A. The first thing we asked this man was his present complaint, and his present complaint was the stiffness and weakness in his dorsal spine. "I am unable to do any lifting or hard work." We asked this question so that we could have something definite to make an examination on. In our examination then we found a fairly well nourished male. His color was good. His weight was 134 pounds, and he was 70½ inches tall. His temperature was normal, his pulse was normal, his scalp and skull were normal, his eyes, ears, nose and throat were apparently normal. His teeth were referred to the dental section because he had some decayed teeth and we did not make an examination of those things. Further examination showed that his neck was normal, his chest was normal, the heart and lungs were both found normal. Blood pressure was normal. There was no venereal diseaase found or any indication of it. Then we went

(Testimony of G. I. Birchfield.)

further and made an examination of the extremities, bones, and joints. In this examination we found a scar on the back extending from the tenth [319] dorsal spine along the right spinal border to the upper margin of the sacrum, 8¼ inches long, due to an operation following a fracture of spine. Then the condition of the spine—we found there a kyphosis—that is a bending of the spine—involving the 10th, the 11th, and the 12th dorsal vertebrae.

Q. Doctor, if I may interrupt, as you go along and meet those technical expressions would you be good enough to explain them?

A. To repeat them?

Q. No, explain what they are.

A. The 10th, 11th, and 12th dorsal spines—that is the middle of the spine, the middle of the individual, not the upper part but in the middle of the back. There is the dorsal spine and the lumbar spine. This involves the vertebrae in the lower portion of the main part of the spine, also the 1st and 2nd lumbar. There was a slight scoliosis in the same region. That means a turning to the side. Kyphosis is this (indicating); scoliosis means to the side. There is no motion in this part of the spine in any direction. There is tenderness to pressure over this region. The muscles over the lumbo-dorsal spine—that is the lumbar and the dorsal region of the back—are atrophic. That means that they don't have much motion to them, they are stiff and don't feel soft and respond to action, like

(Testimony of G. I. Birchfield.)

you put your finder on a violin string that you could feel the motion or the tenseness of it. He has a drooping of the right shoulder. That is the extent of our examination, with the exception of the X-rays. The X-rays show the lower dorsal and lumbar spine, which were read by Dr. Hopkins, a member of the board. It shows an old injury to the 12th dorsal and the 1st, 2nd, and 3rd, lumbar vertebrae. The articular surface between the 12th dorsal and the 1st lumbar is somewhat irregular and indistinct. The intervertebral disk—that is the spaces between each spine—is *narrocd* and [320] there is some lipping of the right upper border of the 1st lumbar—that means that the bone is lipped over a little bit—and absorption on the right upper angle. The 1st and 2nd lumbar vertebrae are practically fused. That means they are as one; they are stiff. That is about all there is with the exception of what I have already made the explanation of there. It says: "Conclusions: Fracture of spine and bony ankylosis." I don't see the rest of that on here, with the exception that when we got down to the feet we also described them, which shows a bunion on the foot, and that was merely just to make a statement of everything that we found on the examination. It had nothing to do with his disability. Our diagnosis: Fracture of the spine. Ankylosis, bony of the spine. Atony of muscles of the back. Atrophy of the muscles of the back. Curvature of the spine; kyphosis. Curvature of the spine; scoliosis. Halux valgus; bilateral, meaning a bunion on both feet. Flat foot,

(Testimony of G. I. Birchfield.)

bilateral, and calluses on the feet, and that was the complete examination.

Q. There was no neuropsychiatric examination made? A. No, sir.

Q. If it had come to the attention of the board during that examination that there was any mental or nervous trouble would a special neuropsychiatric examination have been made?

A. The reason we didn't make one was this, because he gave us a very definite history in his own language, and it was so clear that there was no indication of any nervous or mental condition at that time, therefore he was not referred to a specialist.

Q. Doctor, basing your opinion on that examination dated January 18, 1924, would Mr. Mahoney at that time have been able to carry on without injury to himself or to his health the occupation of a clerk? A. Yes, I would say he should.

Q. A meter reader? [321] A. Yes, sir.

Q. Janitor? A. Yes, sir.

Q. If qualified, a bookkeeper or accountant?

A. Yes, sir.

Q. In fact any occupation that did not call for heavy manual labor? A. Yes, sir.

Mr. Dillon: That is all. Thank you. Oh, wait one second. May I be permitted, your Honor?

The Court: Yes.

Mr. Dillon: There is one intervening examination the Doctor did not make.

The Court: Yes.

(Testimony of G. I. Birchfield.)

Mr. Dillon: Doctor, I will read you the findings and examination made April 16, 1926 of William V. Mahoney at Seattle, which are as follows: "Complaint: Pains through the back and hips; when I sit down and get up am all stiff. Findings: Fairly well nourished and developed; skull"—one word I can't read—"eyes and nose referred. Ears and throat and neck"—may I have counsel read it? I think his eyes are better than mine.

Mr. McGan: "Fairly well nourished and developed. Eyes and nose referred. Ears and throat —neck and thryroid normal. Lungs broad and flat. Heart and lungs and abdomen normal." There is an abbreviation there. "No G. I. complaint. No. Romberg. Bones, joints, and extremities all" — and then he has got A. N. or some sort of a sign—" except back and feet referred by Dr."—is that Joiner?

A. Yes, there was a Dr. Joiner there at that time.

Mr. McGan: He has findings on his eye, ear, nose and throat examination. I don't think we need to read all of it. Dr. Seibert's examination, referred: "Back and feet. Scar 8½ inches beginning to the right of 10th dorsal vertebra, [322] extending downward, postoperative for fracture of spine. Scar is well healed. There is rigidity of muscles of back with atrophy, also rigidity of spine in lower dorsal and lumbar. Movements as follows: Forward to 165; backward to 170. Lateral motion about ten degrees to the left. There is a

(Testimony of G. I. Birchfield.)

marked kyphosis from tenth dorsal to lower lumbar, and a slight scoliosis in lower dorsal. Referred for X-ray 2/11/25. Both feet are flat, one dregree; no symptoms. Bunions on both feet. The right one is somewhat tender. Left, no complaint. Small callous under head of fifth metacarpal right."

Q. (By Mr. Dillon) Doctor, would you state what differences, if any, there were in those findings and your examination two years earlier in January, 1924?

A. I couldn't see any difference there at all. It is about the same.

Q. Doctor, basing your opinion as an expert and on these findings and your examination of 1924, would you say that on April 16, 1926 Mr. Mahoney could have carried on without injury to himself or to his health the same occupations that I detailed to you previously?

A. Yes, sir, I believe so.

Mr. Dillon: Thank you very much.

Cross-Examination

By Mr. Bynon:

Q. Dr. Birchfield, are you in Seattle now?

A. Yes, sir.

Q. Are you with the Government?

A. No, I am not with the Government now. I haven't been with the Government since '34.

Q. But you were at the time you made this report?

A. Yes, I was with the Government at that time.

(Testimony of G. I. Birchfield.)

Q. Were you in general practice at that time?

A. No.

Q. Were you following general work, I mean?

[323]

A. Doing general work.

Q. You were not a specialist?

A. No, I did their general work and hospital work for them, and all their treatments.

Q. But you never have specialized in neuropsychiatry? A. No, sir.

Q. Or any form of mental or nervous diseases as a specialist? A. I beg your pardon?

Q. I take it you have never engaged in practice in any form of mental or nervous diseases as specialist.

A. No. I have had a lot of experience in them, but I haven't been a specialist at it.

Q. Your practice has been a general practice?

A. Yes.

Q. On this board you had a man named R. T. Hopkins? A. Yes.

Q. What was his specialty?

A. He was supposed to be the man that described the scars, and so forth, and I had to make the general examination, and he measured the scars. He did the measuring of the scars and the extent that the patient could bend, or what not.

Q. Well, he was specializing in orthopedics, wasn't he? A. Yes.

Q. Tell the jury what that means.

A. That is one that specializes in bone work.

(Testimony of G. I. Birchfield.)

Q. Now A. C. Feaman——

A. (Interrupting) He was the secretary.

Q. He was the secretary and recorder?

A. He recorded it. We made the examination and Dr. Feaman went over it; if he wasn't satisfied with the thing when he was writing it down he would go over it. I might say that Dr. Feaman was a specialist in lung and heart diseases.

Q. You had a lung and heart specialist, and a bone specialist, and yourself as a general practitioner as chairman? [324]

A. That is right.

Q. Do you know why you made this examination?

A. Yes, we made it for a board to find out what his disabilities were.

Q. My point is, were you making a lot of these examinations at that time?

Q. Just in 1924 we started to make board examinations at that time. That was the year we started to make board examinations.

Q. Well, you were making a lot of them at that time, weren't you?

A. Yes, we were making quite a few of them.

Q. Of men disabled in service?

A. Yes, that is right.

Q. And you found the condition of this man's back, where he had a broken back in France? Is that right?

A. Yes, on his record that is what he complained of and that is what we made the examination of.

(Testimony of G. I. Birchfield.)

Q. I notice you say here, Doctor—you use the language that doctors employ, "Tenderness to palpation over this region". A. Yes.

Q. Now in lay language does that mean that he had pain in part of his back where he had his back broken?

A. It means that wherever you put your finger on there and do percussing over the back you might find some tenderness. You have got to put them down as the patient tells you.

Q. Do I understand that the patient says it hurts when you do that?

A. Yes, that is what he tells us, absolutely.

Q. Now you spoke about kyphosis?

A. Yes.

Q. That is one curve in the spine that is not normal, isn't it? A. Yes. [325]

Q. And you found another curve in the spine that was not normal too, didn't you? A. Yes.

Q. In your opinion were those things due to the breaking of his back?

A. Due to the operation of his back, from the stiffness, taking the flexibility out of this back from fixing the spine so that they wouldn't move and it would heal.

Q. You also remarked in these reports about atrophy of the muscles of his back? A. Yes.

Q. Do I understand by that that you mean the wasting away of the muscles of the back?

A. Yes, because he couldn't move those muscles around the area where the stiffness was.

(Testimony of G. I. Birchfield.)

Q. I take it, Doctor, that you did like people would normally do, you took for granted the things you could see about the man and put those down, didn't you?

A. We didn't always take it for granted. It must be remembered that in examining many men that we are pretty well versed on the general attitude of the men that we are examining and we can pretty well tell what to examine them for. His back was his main thing, and if there was anything else we followed it up, and that was why we didn't go any farther than we did. We covered everything that this man complained of in this examination.

Q. Well, you wouldn't expect a man with an unsound mind to know it, would you, Doctor?

A. Well, I don't know whether I would expect it or not. Sometimes we could tell by talking with them. I wouldn't think a man would have an unsound mind that would give us a clear history of where he had been, and it had never been taken before. That was given by him. We put down where he had been and where he had served, and we felt after that, if the man was intelligent enough to give us those things, we didn't have much of a mental case there, and he didn't complain of any nervousness [326] whatsoever in his complaint there.

Q. Doctor, are you telling this jury and telling this Court that you did not have the Veterans Bu-

(Testimony of G. I. Birchfield.)

reau file for this man when you made the examination?

A. We had his file, but at that time we asked him those questions. We didn't copy anything down. I don't think you will find any previous history there. I am saying this because I believe it is so. I don't think you will find any previous history with that notation on there where this man was and what he done, and everything.

Q. Well, if there is such then you are mistaken about that?

A. Yes, I am mistaken if there is such a thing, but I am quite sure there is not.

Q. I will ask you again if you as a medical man would expect a man with an unsound mind to know it or tell you about it.

A. Yes. We gather a lot in practicing medicine. We can tell some of the general nervous conditions of men, their temperament and so forth. We have to have a little inkling of all things that happen to men to know what to do with them.

Q. Would you go with me so far as to say sometimes you don't catch it?

A. Oh, we might not catch it sometimes, but we don't miss many things if we are on our toes. Most of us are.

Q. Well, if this man had an unsound mind at that time you didn't see it, did you?

A. No, I didn't.

Q. Doctor, do you think it would affect this man's central nervous system to be hit on the head

(Testimony of G. I. Birchfield.)

by three sacks of potatoes with force enough to break his spine?

A. Oh, it might at the time, yes.

Q. Do you think it would affect him at all if the injury was sufficient to keep him hospitalized from November 11, 1918 until May 22, 1920?

A. I didn't get all of that question, please. [327]

The Court: Read the question.

(The question was read.)

A. Oh, it might affect him some, yes; it would affect any of us to a certain extent, but they didn't hospitalize him for his mind, they hospitalized him because they wanted to get his spine well.

Q. I am asking you if you think a blow sufficiently heavy to break a man's spine and put him in the hospital eighteen months while they were curing him would affect his central nervous system.

A. Oh, it would affect him some, yes.

Q. And if you found that same man confined to the Oregon State Hospital in 1934 as insane with epileptic deterioration would you think there was any cause for his then condition?

A. Well, I wouldn't think so, because there is a long period of time between the time he got out of the hospital. They most generally recover from nervous shock in that length of time.

Q. I will ask you specifically, Doctor, if you as an expert medical man found that on November 11, 1918 the man suffered the injury that Mr. Ma-

(Testimony of G. I. Birchfield.)

honey did, the one I have just detailed to you which kept him in the hospital for eighteen months, and you found in 1934—without any other intervening cause—him to be found insane in the Oregon State Hospital with epileptic deterioration, would you think there was any cause and effect there? Would you think that the injury which broke his back had anything to do with the insanity and epileptic deterioration? A. No, I don't think so.

Mr. Bynon: That is all.

Redirect Examination

By Mr. Dillon:

Q. Doctor, if in addition the records will show Mr. Mahoney was in no hospital from the date of his discharge until 1934 [328] would that be any additional grounds for your opinion?

A. Yes.

Mr. Dillon: That is all.

Mr. Bynon: No questions.

(Witness excused.)

Mr. Dillon: At this time, your Honor, I had better make inquiry. I desire to read certain portions of Plaintiff's Pre-Trial Exhibit 10 which has been introduced by the plaintiff—no, I see here it has not been introduced. Is that correct?

Mr. Bynon: Part of it has been introduced.

Mr. Dillon: That is true; part of which was introduced. At this time defendant desires to introduce the complete exhibit and to read portion from it.

The Court: There is no objection, as I understand.

Mr. Meindl: We have no objection to counsel reading the defendant's exhibit, but I don't think it would be well to take the time to read the plaintiff's exhibit at this time. He could in his argument at the close of the case, but to read the exhibits offered by the plaintiff is rather unusual.

Mr. Dillon: I am only going to read the ones the defendant is offering in evidence. Plaintiff's have already been read.

The Court: If there is no objection he may introduce them. Have them marked first.

(Defendant's Exhibit No. 10 consists of numerous papers, including a statement by the insured's wife, copy of physical examination, continued notes, discharge slip, and correspondence. That which is pertinent to the issue herein is in words and figures as follows, to-wit:) [329]

(Testimony of G. I. Birchfield.)

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DEFENDANT'S EXHIBIT No. 10

Oregon State Hospital

Hospital Station, Salem, Oregon

#10441

Admitted Mar. 9, 1934

Name and relationship of person giving history Clara Mahoney wife March 19, 1934.

An accurate and intimate knowledge of the previous history of patients admitted to the Hospital is essential for their intelligent and proper treatment, and the friends of patients are earnestly requested to answer the following questions fully, carefully and frankly, as such information will be considered strictly confidential and to return this form to the Superintendent as soon as possible.

1. Name of patient. — Wm. V. Mahoney
2. Age and birthplace of patient. — Age 37 years. Born at Flandreau, South Dakota.
3. Occupation of patient. — Bookkeeper.
4. Occupation of husband or father of patient. — Brick layer
5. Religious persuasion of patient. — Catholic
6. Facts about parents. Were the parents related before marriage? Did either parent have tuberculosis, syphilis or epilepsy? Did either parent show mental peculiarities or insanity? Did either have any criminal history? Was either ever confined in an institution? To what extent did either parent use alcoholic drinks? — Not related before marriage. Neither parent had diseases mentioned. No—both parents normal. No criminal history. Neither parent ever in any institution. Mother did not drink but father drank pretty hard.

7. Answer the inquiries contained in question 6 as they apply to grandparents, uncles and aunts of the patient. And state in each case whether the person affected belongs to the side of the father or to the side of the mother of the patient.	Patients grandparents lived to very old age were not affected by disease never in institutions. Aunts and uncles healthy never in institutions.
8. Facts about brothers and sisters. Number of brothers and sisters living or dead, and causes of death in each case. Mental peculiarities, criminal history and insanity of brothers or sisters. Were any ever confined in any institution. What diseases have they had?	One sister and three brothers living. One brother dead, died in infancy. I do not know the cause. All living brothers & sister healthy—none confined in any institution—one brother had appendicitis. [330]
9. Children of patient. Number living and dead, and causes of death. Miscarriages. Date of birth of last child. Alcoholism, criminality, convulsions, mental peculiarities, or insanity in any of the children.	No children at all.

Defendant's Exhibit No. 10—(Continued)

10. Condition of mother during pregnancy and confinement.	
11. Peculiarities of the patient during childhood.	None.
12. What diseases did the patient have during childhood?	Measles, mumps & chickenpox.
13. School training, age and extent, progress and ability.	Grammar school—University of Washington. Quite able considing his educational background. Also business college.
14. Were any peculiarities noticed at puberty?	None
15. Describe life, moral character, occupation, successes or failures after leaving school. Natural disposition.	He is hot headed—good natured—not lazy—average moral character—sort of a failure because of his physical disability incurred in war—injury to the spine
16. Age at marriage. Were the domestic relations happy or otherwise?	He was married at 23 years of age—not a happy married life.
17. What sickness or disease has the patient ever had?	Spells of dizziness—would fall down and become rigid.
18. What injuries or accident has the patient ever had; Has the patient ever had convulsions or	Spine injured in France. Yes he has had convulsions and fits. No over-exertion or fright.

fits? If so, describe these. Had there been over-exertion or fright?	When he has a spell he falls after sweating, and rumbling noise in throat, becomes rigid for a hour & vomit thereafter—
19. To what extent did the patient use alcoholic drinks or drugs? What kind of liquors were used?	
20. Has patient ever had syphilis.	No.
21. If a woman who has borne children, what was her mental condition during pregnancy and childbirth?	
22. Has the patient ever been insane before? If so, how often, how long, how affected, when and where treated?	No. [331]
23. State fully the first symptoms of mental derangement observed. When they began, and describe the course of the mental disease up to the time of commitment, giving the supposed cause.	Lately he has become violent and strikes me. This is just in last few weeks—I think his trouble is due to his spells which have become more and more frequent.
24. State the condition of the bodily health prior to and during this attack.	He has not been eating or sleeping regularly. His health has not been very good.

Defendant's Exhibit No. 10—(Continued)

25. State any facts in regard to digestion, sleep, gain or loss of flesh.	Digestion fair—sleeps sound—has been losing weight.
26. Has violence to others been threatened or attempted; and if so, in what way?	While drinking he threatened a man with a gun.
27. Has suicide been threatened or attempted; and if so, in what way?	No.
28. State any other facts relating to either mental or physical condition.	Normal mental condition—poor physical condition.
29. Name and birthplace of father; maiden name and birthplace of mother.	Thomas Mahoney born in Ireland—Mother's maiden name was Mann and she was born in Minnesota.
30. Postoffice and telephone address of the nearest relative or friend.	I am his wife, my address is 7026 S. W. Sixth Street, Portland, Oregon, no phone.

(signed) MRS. CLARA MAHONEY

Defendant's Exhibit No. 10—(Continued)

Wm. V. Mahoney C-430 162

Body stripped, found fairly well nourished. Skin clear and of healthy appearance. Pupils dilated but react to light. Teeth in a fair state of repair. Thyroid gland negative. Heart and lungs negative. No tender points over chest or abdomen. No lymphatic enlargement. Negative for hernia, hemorrhoids, flat feet, and varicose veins. Blood Pressure 108/80. Unable to palpate liver, spleen or kidneys. Genitalia negative. Prostate gland small and soft. Has slight hyphosis of lower thoracic region, including the 10th, 11th, and 12th dorsal vertebrae. Gait normal. Reflexes active and equal. Negative for other neurological manifestations. Patient underwent laminectomy operation in 1918. Suffered fracture of probable 10th, 11, and 12th dorsal vertebrae. This occurred in 1918 in France. Patient gives the history of having had convulsions at rather infrequent intervals during the past ten or twelve years. In fact when admitted to the Oregon State Hospital his tongue was badly bitten on each side and occurred during a convulsion. Just prior to admittance here the patient developed an acute psychosis characterized by certain hallucinations and delusions of persecution, believing that someone was after him and that a policeman [332] was going to throw him into the river. In fact he was very much confused and stupid when received here and could give no reliable history at that time. The last several days the patient has completely cleared up mentally, is able to cooperate very well,

Defendant's Exhibit No. 10—(Continued)

is up and about and doing some chores about the hospital premises, and is improving both mentally and physically. He is now under active treatment. Aside from the old injury to the back, patient is in a fair state of physical repair and suffers from no serious organic disease that could be discovered at this examination.

N. P. Diagnosis: 17-A Epileptic Deterioration, undoubtedly traumatic in origin.

March 24, 1934

Ore. State Hosp., Salem, Ore.

Oregon State Hospital

Record of Examination on Admission

Case No. Name Mahoney, Wm. V.

Cooperation Date admitted

Date examined 3/15/34 Reliability

Age 39 Weight Height

Past History

Diseases: Chicken pox Smallpox Diphtheria Measles Mumps Influenza Tonsilitis Chorea Rheumatism Pleurisy Pneumonia Malaria Scarlet Fever Typhoid Fever T. B. Ca.

Convulsions 2-3 yrs. epilepsy

Injuries Frac. 10, 11, 12 dorsal vert. 1918

Operations Lamenectomy 1918

Head: Headache Infrequent

Eyes: Glasses Failing vision

Inflammation Pain

Ears: Loss of hearing Pain

Discharge

Defendant's Exhibit No. 10—(Continued)

Nose: Head colds Infrequent Discharge Nose is stuffy

Teeth:

Cardio Respiratory: Pain in chest No Palpitation Dyspnea No Cough No [333] Hemoptysis No Edema No Ear ringing No Spots in vision Vertigo No Fainting

Gastro Intestinal: Habits of eating normal Appetite Good Nausea No Gas No Vomiting No Hematemesis Colic No Icterus No Diarrhoea No Constipation No Hemorrhoids No Stools

Genito Urinary: Dysuria No Mematuria Pyuria Retention No Incontinence No Frequency No Nocturia No Syphilis No G. C. 1916 Soft Chancre No

Physical Examination

General observation

Skin Normal [334]

Head No deformities Facies

Scalp Normal

Eyes Pupils dilated—react to L. & A.

Ears

Mouth Teeth—fair

Lips Normal

Throat Slight infection & granulation

Nack Trachea in midline

Chest Normal

Breasts

Lungs Normal

Heart Normal

Defendant's Exhibit No. 10—(Continued)

Pulses

Blood pressure 108/80

Abdomen No tenderness, no masses

Liver N. P. Gall Bladder N. S. Kidnesy N. S.

Genitalia (Male) Normal

Extremities Normal

Spine Slight kyphosis of lower thoracix (10, 11, 12).

Joints, bones

Glandular system

Rectal Prostate small & soft

Neuromuscular Examination

General Gait normal

Muscles Tone normal

Sensation

Reflexes Active & equal. No Babinski or Romberg

[335]

Oregon State Hospital

Continued Notes

Name William V. Mahoney Number

Age 37, Married, Catholic, Accountant. Born in S. Dakota. In Oregon 8 years. Drinks Moderately. Suicidal. Made attempt. Jumped in river. Delusions of persecution. Thinks that someone tries to get him. Sleep fair. Memory poor. Delusions changeable. Hallucinations of sight, and hearing. Natural temp. poor at present. question of epilepsy. Mrs. Clara Mahoney, Wife. 621 S.E. 6th St. Portland, Ore.

F. KRATTEBOL.

Defendant's Exhibit No. 10—(Continued)

March 16, 1934. Patient agreable. Has had no attacks since received. Takes one luminal morning and night. Trans. to ward 28, to help in the kitchen.

F. KRATTEBOL.

Apr. 5 Trans. to American Lake

C. W. HEWITT (signed) [336]

State of Oregon

..... Oregon State Hospital Violent x

Non-Violent

Notice of Discharge of:

Wm. V. Mahoney Date April 5, 1934 who was admitted from Multnomah County on March 9, 1934

.....

Superintendent

..... Oregon State Hospital

[337]

Oregon State Hospital

Ward Admission Record

(10441)

Name Wm. V. Mahoney County Mult. Ward C Admitted Mar. 9, 1934 at 7/30 P.M. Bathed 7/35 P.M.

Tendencies: Homicidal Violent Suicidal Depressed

Condition of Person: (General Nutrition, Cleanliness, Vermin, etc.) Fairly nourished and clean

Skin: (Marks, Bruises, Scars, Skin Diseases, Eruptions and Locality) Bruise on index finger of right hand. Bunion on right large toe. Large

Defendant's Exhibit No. 10—(Continued)
scar in center of back. Bruise on right knee. 2 discolorations on left leg.

Physical Disorders: (Deformities, Ruptures, Fractures, Dislocations, etc.)

Quality and Condition of Clothing: Fair quality and clean

Articles Found on Person:

Forward This Report to Office
B. O. LARKINS
Attendant [337a]

F. J. ERNEST

was thereupon produced as a witness in behalf of the defendant herein, and, having first been duly sworn, was examined and testified as follows:

Direct Examination

Mr. Bynon: We will concede the Doctor's qualifications.

Mr. Dillon: His qualifications as an expert in neuropsychiatry?

Mr. Bynon: That is right.

Q. (By Mr. Dillon) Doctor, I hand you through the bailiff report of physical examination dated October 24, 1932, which constitutes a part of defendant's Pre-Trial Exhibit 1 introduced by plaintiff. Calling your attention to Page 5 or 6 of the said report, I would ask you if that is your signature attached thereto. A. Yes.

Q. Doctor, how long have been with the Veterans Administration? A. Since 1922.

(Testimony of F. J. Ernest.)

Q. Specializing in neuropsychiatry?

A. Neuropsychiatry, nervous and mental diseases.

Q. Doctor, calling your attention to the neuropsychiatric examination—is that what it is called?

A. That is right.

Q. Of what date is this?

A. October 24, 1932.

Q. I would ask you of what your examination at that time consisted.

A. It was a complete neuropsychiatric examination, which means that we made a study of the veteran neurologically as well as mentally.

Q. Doctor, what were your complete findings of that examination?

A. Well, I don't find anything in this examination that was definite for any diagnosis in the neuropsychiatric field. I find that he was a well developed and nourished male; had no [339] disturbances in gait or station. He moved about perfectly normally. His muscles were normal except in the back, where there was a scar indicating that he had been operated on at one time, and I knew that that was on account of his having the lower dorsal and lumbar spines fractured while in service. Other musculature was normal, except that he had tremors —by that we mean that there was some shakiness of both of his arms, and especially his ankles, almost an ankle clonus, and that by that we mean that there was a motion there that was almost continuous,

(Testimony of F. J. Ernest.)

with increased reflexes. By that I mean that the muscle tone was more than normal, but not abnormal. It hadn't gotten to the place where we considered it was abnormal unless there were other findings to go with it. It is the kind of thing that we get in people that have been over-stimulated for a time. Unless there is some other reason for it we leave it go at that. His sensory system was essentially negative. By that I mean his touch and feeling and in handling things he was normal. There was no lost sensation or no pathological changes. The thyroid gland was negative. His mental condition at that time was perfectly normal except that he was somewhat apprehensive and was worried and self-concerned. Those things come with the difficulty that he had had, that he had gotten while in service, and it had been with him ever since service. Then the thing that really mentally was bothering him was, he had told me that for the past year he had been having some kind of spells in which he would fall. He had had one, he said, about a year before, and he had had three or four in between, and he had had one not very long before he came in for the examination. That was the real reason for his coming in. He was somewhat worried about these spells. He wanted to know what they were, so after I had completed my examination as far as I could go without laboratory reports I told him I thought he should come into the hospital for a spinal puncture. We wanted the spinal fluid studied to

(Testimony of F. J. Ernest.)

deter- [340] mine whether there was probably something wrong within the brain. It might be a brain tumor, it might be sclerosis of some type, it might be something that was growing within the cranium that would bring about these spells. I asked him if he drank much, because alcohol often accounts for this sort of thing in this type of case, and he denied it; said he didn't drink. Then I told him he should have the spinal puncture because there might be something going on there that we should know now in order to either remove it or to fix it so that he would not have any more of these spells, but he said he had had s much trouble with his back that he didn't want anybody monkeying around his back, especially with a needle, unless it was absolutely necessary, and that if he continued to have the spells he would come back later and then if we thought it was necessary he would let us do a spinal puncture.

Q. What was your final opinion or summary, Doctor?

A. Well, my conclusion was—I can state it better probably just as it is here. The patient for years has been rated as permanently disabled on account of atrophy, muscles of the back, curvature of spine, with ankylosis, and arthritis, chronic. We have demonstrated some abnormality in both lower extremities, more marked in the right, and patient gives a history of seizures, during which he loses consciousness. He states that right upper extremity has a feeling of heavy helplessness before he loses

(Testimony of F. J. Ernest.)

consciousness, at the same time there is a roaring in the ears, and then oblivion; then he goes out. After he first finds himself it requires several moments before he becomes oriented, before he knows just where he is. When he comes to it takes a little while to realize where he has been for the last moments before. This history highly suggests epileptoid seizures. I use the word "epileptoid" because the word "epilepsy" just means falling sickness; it means that there is something the matter with the man and he falls down. [341] Neuropsychiatrists have adopted a method of applying epilepsy only to organic disease, to where there is something wrong with the brain or something involving the brain that brings about these spells, rather than emotional things like any hysteria where they will fall in spells of this kind or where they faint and fall, as they do when there is a lack of blood supply to the brain. It is falling sickness just the same, but we don't call that epilepsy. In my examination I said "epileptoid", meaning it was like an epileptic attack because he had these sensations coming on and then he would have the falling sickness afterward, and we would call the falling sensation that came on first as an aura, meaning that it is something that notifies him that he is apt to have a spell. This history highly suggests epileptoid seizures, and inasmuch as the first occurred about a year ago, and at that time he was 35 or 36 years old, they should be

(Testimony of F. J. Ernest.)

due to some organic disease or to intoxication, that is, any sort of drugs. Alcohol will do it. There are a number of other drugs that bring about an intoxication, and as result of the intoxication oftentimes they have seizures. A lot of men when they are drunk have seizures. Not every drunk man does; it depends on the individual. We say they have to be allergic to whatever the drug is, whether it is whiskey or morphine or codine or some other drug. They have to be more or less alergic to it or they won't have seizures, so in that way they are different from other people. He denies the use of alcohol or other drugs. Then I went on with the explanation of my reason, as I say, for asking for laboratory proof that there was something wrong within the brain or cord, not because I thought of any specific disease, but the spinal fluid, the water on the brain, as you talk about it, tells us if there is a tumor or degenerative changes within the cranium, referring to the brain tissue itself. All that is read by chemical analysis and by microscopic studies of this fluid when it is used in the laboratory, [342] and for that reason we asked for a spinal fluid report. Then of course we didn't get it so I couldn't make a diagnosis on what I had learned or what he had told me, and without the laboratory findings I just made a diagnosis of "Undiagnosed." We have a number for that in the Veterans Administration. It means that there aren't sufficient manifestations, we

(Testimony of F. J. Ernest.)

haven't found enough the matter with him to warrant us in concluding he has any special disease.

Q. Doctor, from the mental standpoint would you say at the time of that examination, October 24, 1932, there was any abnormality of the mind?

A. There wasn't any that I could find. His reactions I thought were pretty normal. He stated that should seizures persist—these may be his own words because my secretary is a stenographer and she takes them down as they are given—or any new disturbance arise he would report to the hospital for further study. That is the reaction of a normal individual, especially one that had had a lot of back trouble and didn't want anymore.

Q. Was there any indication to you of any unsound mind there?

A. Oh, no, no, this is a perfectly normal reaction.

Q. Was there anything indicated that would have prevented him having the capacity for determination of whether he had any legal rights?

A. You mean whether he knew right or wrong, or what do you mean exactly?

Q. Was there any disturbance there as to his capacity for determining his ordinary legal rights?

Mr. Bynon: That is objected to. That is one of the ultimate questions in this case. It invades the province of the Court and jury.

The Court: I understand that is what you say is involved in this situation; that is your contention. The witness is [343] answering an expert question

(Testimony of F. J. Ernest.)

whether he was normal enough to carry on under normal conditions.

Mr. Bynon: I think on the same theory, your Honor, all other ultimate questions of fact have to be resolved by your Honor and the jury. We are back where we were some years ago before the practice was established, and I submit, your Honor, that is one of the questions——

The Court: (Interrupting) I permitted you to ask a question whether at the time of the examination the condition was incurable. It is the same problem. I think he may answer.

A. I didn't find anything in any examination to indicate that he didn't know exactly what he was doing. I think the evidence we have right here in the report is even better than opinion because he is clear in his understanding of what I wanted him to do and he gave a very good reason why he didn't want a spinal puncture, and certainly he would be able to know whether he had rights as any ordinary citizen would know them.

Q. (By Mr. Dillon) Doctor, is there any connection between epilepsy itself and possibly a subsequent mental condition? Do I make myself clear? A. No, you don't.

Q. I mean if a man has epilepsy does he ordinarily have a mental disturbance or become of unsound mind? Can that be due to epilepsy?

A. Do you mean that every epileptic has an unsound mind? No.

(Testimony of F. J. Ernest.)

Q. Is there as a general rule in the early stages of epilepsy any connection between epilepsy and insanity?

A. Well, it is true that epileptics after a period of years and where they have had a number of seizures—the epileptic seizure is only a manifestation of an insult. By an insult I mean some disturbance that happens to the brain. I might compare it this way, that lightning and thunder results from electricity jumping from one cloud that has more electricity [344] than the other that gets close enough so that the electricity jumps from one over to the other, and it produces a disturbance in the atmosphere. You see the lightning and hear the thunder. Now if in one part of the brain that same thing happens—I am not telling you that it is electricity; I don't know, I am only giving that as a simile, but it is some disturbance that happens between one area of the brain and another and it is that explosion or reaction that takes place that brings about the picture that we call epilepsy, the falling sickness that absolutely knocks him out for the time. He doesn't breathe; even his heart appears to stop for a time, and then he falls and then he gradually comes back again. Now it was an explosive thing that took place, and after a man has had many of those through his life he tends to deteriorate, because those insults coming one after the other tend to bring about enough destruction so that he is never really normal.

Q. You have given what I was going to ask,

(Testimony of F. J. Ernest.)

Doctor, the meaning of epilepsy with deterioration.

A. Well, we have many epileptics that don't show deterioration for years.

Q. Deterioration usually comes or can come at anytime?

A. That is the idea, depending on the number and severity of the insults or the seizures. The seizure is the manifestation that tells you how serious it is.

Q. Doctor, you have that exhibit still in your hand. Turn to the examination reports of October 29 to November 5, 1937. Is there an examination there made by you? A. 11/4/1937.

Q. You made an examination at that time?

A. Yes.

Q. You have the report of that examination before you? A. I have. [345]

Q. What was your diagnosis at that time?

A. Psychosis, with epileptic deterioration.

Q. Will you explain what that means, Doctor?

A. That means that these seizures that he has had and the insults to the brain over this period of time have brought about changes that make him different from what he was before. In other words I say "psychosis", and the deterioration is the mental changes or reduction that has come about as a result of all this, that has brought about the psychosis. The word "psychosis" or "psychotic" is the same as the legal term meaning insane.

Q. Then, Doctor, the difference between your

(Testimony of F. J. Ernest.)

examination in 1932 and your examination in 1937 was very marked?

A. Oh, yes. In the first one there was no evidence of any mental change, and in the last one he is definitely psychotic, with deterioration.

Q. When that condition arrives, that psychotic condition, it is not difficult for a psychiatrist to *not* it, is it?

A. Well, it is isn't difficult for anyone to note it. As a matter of fact, the psychoses are usually diagnosed by the family of the patient and the ordinary physician. The only thing the psychiatrist does is classify it.

Mr. Dillon: I think that is all. Thank you, Doctor.

Cross-Examination

By Mr. Meindl:

Q. Doctor, just what is epileptic deterioration?

A. It is a reduction in mental capacity as the result of the shocks to the central nervous system that have come about from these brain insults.

Q. That is not a normal mind, is that it then, Doctor?

A. No, just to the degree they are deteriorated that is abnormal.

Q. What is traumatic epilepsy?

A. Traumatic epilepsy is epilepsy the result of trauma, [346] usually to the head, in fact I wouldn't recognize trauma as a factor in epilepsy unless the head was injured.

Q. What is trauma?

(Testimony of F. J. Ernest.)

A. Trauma means compact, or to be struck, traumatized, to be hit, to be shocked.

Q. Doctor, would it be a trauma if an individual was hit on the head by three sacks of potatoes which fell with such a force that it broke his back?

A. Now wait. I don't know if I understand your question. Will you repeat it, please?

The Court: Read the question.

(The question was read.)

A. Yes.

Q. (By Mr. Meindl) That would be a trauma?

A. That would be a trauma, definitely.

Q. Would that be a sufficient trauma to cause traumatic epilepsy?

A. Well, I can't understand trauma to the head-breaking the lower dorsal and lumbar spines without breaking his neck. I can't understand that.

Q. Yes, Doctor, but would you answer the question? Would that be a sufficient trauma to cause traumatic epilepsy?

A. Well, it might be and might not. A lot of people have been hit on the head time and time and time again, knocked down as they are in prizefighting, and they never have epilepsy.

Q. And with their back broken, Doctor?

A. Yes, we have men that had their backs broken that never have epilepsy. It is a rare thing that you have epilepsy with a broken back.

Q. I mean the combination, being hit on the head and getting the back broken?

(Testimony of F. J. Ernest.)

A. Well, it depends on how much he was hit on the head, don't you see? Frankly, I didn't think the hit in the head had anything to do with the epilepsy in this case. [347]

Mr. Meindl: If your Honor please, I move to strike the Doctor's volunteer statement as not in response to any question whatsoever.

The Court: Yes, it is stricken.

Q. (By Mr. Miendl) Would you have recognized Mr. Mahoney when he came into the courtroom, Doctor? A. Oh, yes.

Q. How long has it been since you had seen him? A. Since I saw him?

Q. Yes.

A. Well, I have seen him a number of times. I can't just tell how long. He was brought into the hospital, I think, on one occasion; I don't know the date. The reason I remember definitely, he came in and we took care of him over night and then he came up to see me in the morning and wanted to go home, and I told him I didn't see any reason why he couldn't go home. He seemed to be all right then. He had just had a seizure, and he went down from the hospital—it was just three or four blocks—on to Terwilliger Boulevard, and he was walking along there and had another seizure and was picked up by someone coming along in a car and brought back to the hospital, so I remember that affair distinctly. That is in the last few years; I don't remember just what year.

Q. What did you notice different about his con-

(Testimony of F. J. Ernest.)

versation the last time you saw him and when you first saw him in '32, Doctor?

A. Well, the first time I saw him his conversation and his attitude, except that he was worried about these spells, wasn't anything that was out of the normal for a man who had had as much disablement, or did have as much disablement as he had as a result of his war injury, and at the last time he was—well, he wasn't all there. He wouldn't carry on a conversation normally. If you would ask him a question he would answer it one way, and maybe you would ask him practi- [348] cally the same thing a little later and he would tell you something entirely different. He was rather restless. He was somewhat confused. I didn't bring out any delusions or hallucinations. He just had the picture of one who was somewhat lost. He wasn't quite sure where he was or what he was doing and you couldn't depend on what he was telling you. In other words he was deteriorated, he was mentally changed, and he wasn't competent. He wasn't all right.

Q. That is based a whole lot on his conversation and being restless, is that it, Doctor?

A. Well, it is the whole picture. When we are examining a man or observing him it isn't what he says so much as the was he says it. There is a lot in how he looks, how he moves about. All of those things are taken into consideration, as well as what he tells you.

(Testimony of F. J. Ernest.)

Q. Was his conversation rambling and disconnected?

A. That is what I meant when I said you would ask him a question and he would answer it one way and then the next time you would ask him pretty much the same question and he would tell it in another way, and he might wander off from his answer and start to talk about something else altogether.

Q. Doctor, what is an electroencephalogram? How do you pronouce it?

A. An electroencephalogram. Well, an electroencephalogram is just another new gadget we have to try to determine the waves of the brain. Encephalon means brain, and of course the electro part of it is an electric appliance of the high frequency order that has been worked on for a number of years, maybe thirty years, but since we have had this ultra development in short wave they have come a little farther along. It is a laboratory device in which I think they use about eight elecrodes, and they are all attached to a machine that has been built up by men who are making studies along this line. One of the latest ones now is being developed down [349] in the University of California. They talk about the alpha, beta, and delta rays or waves. The alpha is normal for one thing and beta is normal for another, and when you have those two normal and you don't get a delta you consider that there isn't any pathology or any diseased condi-

(Testimony of F. J. Ernest.)

tion in the brain, but the one that really answers your question is the delta. For instance, I am talking to you about it and I know about the machine, but my effort to read the gram, the picture that the pen points after the patient has been fixed up with one of these and the current turned on, would be of very little or no value, because I don't know about it, only that I read about it in the maga- and he has to have had a lot of experience with that kind of a thing. The purpose of it is to determine if there is a brain tumor or something, and its location, so that they can go in and remove it, and it is a good thing and ultimately it may become another added good laboratory modality for determining these things that you are talking about.

Q. You used no such test on Mr. Mahoney, did you, Doctor?

A. No, we didn't have them at that time. They have only been used in the last year or two.

Q. In other words you never have used such a test on him?

A. No, but we get reports by—well, I wouldn't know about it, only that I read about it in the magazines. We have regular neuropsychiatric or neurological magazines and these things come out as they are developed——

The Court: (Interrupting) All right, that is all right. Go ahead with something else.

Q. (By Dr. Meindl) Doctor, assume that an individual appeared normal, happy, working, and then two years later upon being seen again changes

(Testimony of F. J. Ernest.)

are noted such as sitting and staring off in space and being highly nervous, being irritable and feeling that people were against him, being suspicious of people, [350] including members of his family, and while employed would hide out and being found would be either standing staring out the window or standing with a blank expression on his face. His conversation would be rambling and disconnected. He would talk about one subject and all of a sudden be off on another subject. He didn't associate with people, kept to himself, was a loner, took prejudice against certain people, didn't seem to want to talk to anyone, and had a vacant stare, felt people were against him. What are those symptoms of, Doctor? This is a hypothetical case.

Mr. McGan: If the Court please, I object to that as not proper cross-examination. It wasn't gone into on direct.

The Court: He is testifying as an expert. He may answer.

A. They are evidences of an abnormality. If they are continuous and always present it would be an evidence of mental deterioration, of change.

Q. (By Mr. Meindl) Even of psychosis, wouldn't it, Doctor?

A. Well it depends on the degree. Suspiciosness is the main thing in your syndrome; that is the more important thing. Staring out of the window and being irritable—there may be a lot of physical reasons that will bring about that, and there may be emotional attitudes that would bring

(Testimony of F. J. Ernest.)

it without any deterioration but if he is delusional and suspicious of others that would be an evidence of deterioration.

Q. It would be an indication of an unsound mind, in other words; is that it?

A. Yes, to that degree it would be unsound.

Q. As I understand, Doctor, on direct examination you said the older members of the family or friends noticed those things and the psychiatrist merely classified them, is that it?

A. Yes, that is the usual thing. The psychiatric individual is brought to the psychiatrist because of his abnormality.

Mr. Meindl: That is all. [351]

Redirect Examination

By Mr. Dillon:

Q. Doctor, in an isolated instance of the type described there would be no basis for any diagnosis, would there? A. No.

Q. They would have to be carried on over a considerable period of time and noted as a habit and continuation before significance could be read into them, would they not?

A. Yes. Deterioration means — like anything else that deteriorates it has progressed, it has changed and a deterioration never recovers.

Q. And if a man suffering from after-effects of an operation of the severity of Mr. Mahoney in this case—if two years afterwards he was inclined to be irritable and was inclined to get angry and

(Testimony of F. J. Ernest.)

suspicious, and quarreled, would that not be more or less a natural development of such a physical condition?

A. It certainly is a common manifestation of those that suffer from it.

Mr. Dillon: That is all, Doctor.

Recross-Examination

By Mr. Meindl:

Q. Doctor, isn't it common for a person to have an injury sufficient to be delusional and to be suspicious? A. No.

Q. You did not intend for that to be included as being a common thing, in other words?

A. He didn't say anything about suspicion.

Q. I believe the question is, Doctor, if it has been included you would not have answered the same way?

A. May I have the question that was asked first?

The Court: Read the question.

The Reporter: I am not sure which question they refer to.

The Court: I am not either.

Mr. Meindl: May we have the last question asked by Mr. [352] Dillon, your Honor?

The Court: Yes.

(The record was read)

The Witness: Well, I believe my answer that I made would stand on that. The suspiciousness is now one of the things, and I am explaining that

(Testimony of F. J. Ernest.)

that is not common for people that are suffering from physical disabilities.

Mr. Meindl: That is all.

Mr. Dillon: That is all, Doctor. Thank you.

(Witness excused.)

Mr. Dillon: I have one more exhibit to introduce. At this time the Government offers in evidence Defendant's Pre-Trial Exhibit 3 to which I understand there is no objection.

The Court: What is the further course of the case? Have you any more witnesses?

Mr. Dillon: No, your Honor.

The Court: Does this conclude it?

Mr. Dillon: Yes.

Mr. Meindl: In the event that that exhibit is admitted into evidence then we would have an exhibit which is marked as a pre-trial exhibit to offer in rebuttal, your Honor.

The Court: Will you have any rebuttal?

Mr. Meindl: No witnesses, your Honor, no.

The Court: No witnesses and no rebuttal. How long will it take to present this case?

Mr. Bynon: In argument, your Honor? We are entirely willing to abide by your Honor's ideas, or we will stipulate between us.

The Court: I don't want to limit you to a definite time. If it won't take too long I will hold a session tomorrow. If it is going to take too long a time I will put it over until Monday. [353]

Mr. McGan: We are pretty brief on this, your Honor.

The Court: I will rule tonight about these exhibits and then will hold a session tomorrow. Would there be any objection on your part?

Mr. McGan: No.

The Court: Would it inconvenience any of the jury to start early tomorrow morning?

(Further discussion as to time of reconvening.)

The Court: Court is now in adjournment until tomorrow morning at nine-thirty.

(Thereupon, at 5:25 o'clock P. M., December 11, 1942 an adjournment was taken until 9:30 o'clock A. M. December 12, 1942.) [354]

Portland, Oregon
December 12, 1942
9:30 o'clock A. M.

(Pursuant to adjournment.)

The Court: You may proceed, Gentlemen. The court now has an offer before it.

Mr. Dillon: Yes, your Honor.

The Court: The Court admits the portion of the matter which relates to vocational training, the third page of the exhibit, and excludes the rest. An exception is given to both sides.

Mr. McGan: Your Honor, would it be all right just to cut that first page out there?

The Court: Yes, or have somebody make a transcript of it before it goes to the jury. I don't care how it is done.

Mr. Meindl: We have no objection to just extracting the first page.

The Court: All right.

Mr. Dillon: The Government rests, your Honor, with respect to the proffer on that ruling. I don't think it is necessary.

The Court: You may reserve a place in the record, and that may be made later.

Mr. Meindl: The plaintiff also will rest. No rebuttal.

The Court: Yes.

Mr. Dillon: At this time the Government would like to make two motions out of the hearing of the jury.

The Court: Let's get the record closed first. That sheet is excluded. This is the present Exhibit 3.

[355]

(The certificate and statement of vocational payments, Defendant's Pre-Trial Exhibit No. 3, was received in evidence, and is in words and figures as follows, to -wit: [356]

Mahoney, William V.
R-204,755
C-430,162

Copy

STATEMENT OF VOCATIONAL TRAINING PAYMENTS MADE IN THE CASE OF WILLIAM V. MAHONEY

No. of Checks	Period Covered			Rate	Amount Paid
(a) 1 Adj.	1- 9-22	through	1-31-22	$100.00	$ 73.33
4	2- 1-22	"	3-31-22	100.00	200.00
2	4- 1-22	"	4-30-22	145.00	145.00
(b) 1 Adj.	1- 9-22	"	3-15-22		100.50
2	5- 1-22	"	5-31-22	145.00	145.00

No. of Checks	Period Covered			Rate	Amount Paid
1 Adj.	3-16-22	"	3-31-22		$ 22.50
14	6- 1-22	"	12-31-22	$145.00	1015.00
1 Adj.	1- 1-23	"	1-15-23		71.17
1	1-16-23	"	1-31-23	145.00	72.50
(c) 23	2- 1-23	"	1-15-24	145.00	1152.50 115.00
(d) 1 Adj.	2- 7-24	"	2-15-24		30.00
(3) 1 Adj.	2- 7-24	"	2-15-24		10.50 3.00
5	2-16-24	"	4-30-24	145.00	337.50 25.00
1 Adj.	5- 1-24	"	5- 8-24		36.00 2.67
				Total Paid	$3957.17

(a) $100.00 rate of payment per month effective 1-9-22.
(b) $145.00 rate of payment per month effective 1-9-22.
(c) Award divided. Payment of $10.00 per month made to wife.
Training interrupted 1-16-24.
(d) $100.00 rate of payment per month effective 2-7-24.
(e) $145.00 rate of payment per month effective 2-7-24.
Rehabilitated 5-8-24.

I hereby certify that the above statement is a true, correct and complete record of vocational training payments as shown by the accounts of the Accounting Division.

(signed) WM. H. HOLMES,
May 4, 1942. Chief, Accounting Division. [357]

The Court: You may make your motion.

Mr. Dillon: In the jury's presence, your Honor?

The Court: No, make your motion now.

Mr. Dillon: Comes now the defendant and moves the Court to grant an allowance of its motion to dismiss, for the reason——

The Court: (Interrupting) You want to rely on the grounds you have stated?

Mr. Dillon: Yes, on the simple grounds that the Court lacks jurisdiction. I take it that is overruled, your Honor.

The Court: Yes, the motion is overruled.

Mr. Dillon: Comes now the defendant and makes its motion for a directed verdict for the reason that the plaintiffs have failed to establish by substantial evidence the insured herein was totally and permanently disabled while the policy of insurance being sued upon was in force and effect.

The Court: The Court will reserve ruling on the motion. Argue the case to the jury.

(The case was thereupon argued to the jury by counsel for the respective parties.)

[Endorsed]: Filed April 23, 1943. [358]

And Afterwards, to wit, on the 10th day of May, 1943, there was duly Filed in said Court, Transcript of opening statement of defense counsel, Court's instruction to Jury, Argument of defense counsel to jury designated by appellee, in words and figures as follows, to wit: [359]

[Title of District Court and Cause.]

TRANSCRIPT OF OPENING STATEMENT OF DEFENSE COUNSEL. COURT'S INSTRUCTIONS TO THE JURY. ARGUMENTS OF DEFENSE COUNSEL TO THE JURY. [360]

Portland, Oregon, December 10, 1942.

Before:

Hon. James Alger Fee, Judge.

Appearances:

Messrs. Allan A. Bynon and Gerald J. Meindl, appearing for Plaintiff.

Messrs. Francis J. McGan and Daniel Dillon, appearing for Defendant.

Edwin L. Holmes, Reporter.

OPENING STATEMENT OF DEFENDANT

Mr. Dillon: If the Court please, and Ladies and Gentlemen of the Jury, as the Court has explained to you, there are two facts here for your determination; one, whether Mr. Mahoney was totally and permanently disabled from any cause whatsoever [362] on August 31, 1920, when he ceased to pay premiums on the policy he now sues upon. The second is, whether on July 3, 1931 he was actually crazy, or at that time had been rated insane or incompetent by the Veterans Administration.

Mr. Mahoney's service in our armed forces is meritorious and extremely commendable. He suffered not at the front, but equally as important, whilst with our expeditionary forces in France, where he received an accident. He was in a hospital from that time in the army until his discharge sometime afterwards, and the injuries he received to his back were serious and they have been permanent since that day to this.

The Government admits without any hesitation that Mr. Mahoney has a permanent disability and has had a permanent disability of severity since the day of this discharge from the army but the Government contends that this permanent disability did not become total, giving him the benefit of every doubt, until at least 1934. The Government will show by deposition from the people who know him in his home town that he did return from the army and after hospitalization was able to work and did work. It is admitted and is common sense, which you will gather very quickly, that at no time of course could Mr. Mahoney do physical labor of any heavy degree. His activities were of necessity confined to what we call sedentary, light, or office work, and the Government appreciated this fact and gave him what is called vocational training, that is, they sent him [363] to the University of Washington, they gave him practical training with concerns for two years and a half, and at the end of that time he was called rehabitated, that is, in the opinion of the men who trained him and his teachers he was able to carry on as an accountant and bookkeeper.

As a matter of fact Mr. Mahoney has done practically no work since his graduation from vocational training. I think it will appear in the evidence that that has been due in great measure not to Mr. Mahoney's inability to work, but that Mr. Mahoney did not desire to work and for certain reasons did not have the incentive to work. Those will be the facts that the Government will endeavor to establish

in respect to the first question of fact as to whether or not Mr. Mahoney was totally and permanently disabled when he ceased to pay premiums on this policy on August 31, 1920, which includes the 31 days' grace he had on the policy. [364]

DEFENDANT'S ARGUMENT TO THE JURY

Mr. McGan: May it please the Court, counsel, and Ladies and Gentlemen of the Jury, I shall first perhaps say something about the policy of insurance. This action, as you know, is what is known as a war risk insurance case.

During the last war the Government issued policies of insurance to its soldiers in any amount from a thousand dollars up, in multiples of five hundred dollars, insuring them against death or permanent and total disability. The principal sum of this policy was ten thousand dollars. It provided that in case of death while it was in force the principal sum would be paid to his beneficiary. In case of permanent and total disability it would pay $57.50 per month during permanent and total disability. In this suit it is contended that Mr. Mahoney became permanently and totally disabled on the 22nd day of May, 1920, when he was discharged from the army or at some time during the period of insurance protection, which ceased when he ceased to pay premiums. He paid one premium after he got out, and the policy lapsed, including the grace period, on the 31st of August, 1920. So one of the questions which will be submitted to you

is whether or not he was at that time permanently and totally disabled, and I am going to ask you to examine all this evidence critically before you reach your decision. Particularly I want to say to you that there isn't any question at all about this man's disability being severe, particularly [367] at this time. He is no doubt permanently and totally disabled now. He no doubt has been for several years, perhaps since 1936. He had in the army a very severe back injury; he broke three vertebrae in his back, and he had the laminectomy—that is the operation where they ankylose the bones, and the back in that portion becomes stiff.

He was kept in the army a year or a little over a year after his injury, in fact he was kept from the 11th day of November, Armistice Day, 1918, until the 22nd day of May in 1920, so it is eighteen months at least that he was kept in the army, and of course he was kept in army hospitals and treated. However, the records show that he wasn't in bed all that time. When he was discharged he was still weak, and his discharge shows that, but after his marriage in Illinois on the 27th day of May, 1920 he went home to his old home at Minot. [368]

COURT'S INSTRUCTIONS TO THE JURY

The Court: Ladies and Gentlemen of the Jury, you have now heard all of the evidence and had introduced before you all of the evidence and have heard the arguments of counsel in the case of Portland Trust and Savings Bank, a corporation,

Guardian of the Estate of William V. Mahoney, Incompetent, Plaintiff, against the United States of America, Defendant. The case has been thoroughly and ably presented to you, and it is now the duty and pleasure of the Court to instruct you as to the legal rules which control the determination of the facts in the case, because as you know, this is an action upon a contract and your findings must be based upon the legal rights and liabilities which arise out of the contract and the law relating thereto.

Now in any case there are certain matters which come before you which are not in themselves evidence and which are not to be considered by you as such. There are certain references to the pre-trial order, which is the basis upon which the case is tried, and there are certain matters of proffered testimony which are excluded by the Court, based on the rules of law. These of course you will not take into consideration in your determination of the case except so far as they are submitted to you in the course of the instructions.

Counsel have made arguments before you. Counsel are [380] respectively employed by the guardian of the soldier and by the United States. It is their duty to their respective clients to present fairly and impartially their side of the case, but obviously counsel are advocates; they are employed for the very purpose of presenting that side of the case and naturally take that point of view. It has been found during a long course of legal history that the fairest way of determining a controversy is to have

it presented to an impartial body of jurors by advocates who do represent the respective parties.

The point to remember about the arguments of counsel, however, is that counsel are not witnesses. The facts that they bring before you are their memory of the testimony which you have also heard. It is your duty to decide the case upon the testimony and other evidence which is before you. It is true if it seems reasonable to you you may adopt any inference which is made by counsel on either side, but you are not bound to do so.

Now there are certain agreed facts in this case which you can take from the record made by the parties. That is, in the first place, the Portland Trust and Savings Bank is the guardian and has the right and does bring this action on behalf of William V. Mahoney, who is an incompetent at the present time, and the parties have further agreed that William V. Mahoney enlisted in the military service of the United States on July 13, 1917, likewise that he was honorably discharged [381] therefrom on May 22, 1920. You have heard also that that was on a certificate of discharge; that on December 7, 1917 the insured applied for and was granted a contract of war risk yearly renewable term insurance in the sum of ten thousand dollars —now this is the contract—wherein and whereby the defendant, that is, the United States, agreed in the event Mahoney became permanently and totally disabled while the insurance policy was in full force and effect, to pay the insured the sum of $57.50 a month so long as he remained permanently and

totally disabled, in consideration of the premiums to be paid by Mahoney as made and provided below. Now then, the important point about that is the premiums of insurance were paid to and including the month of July, 1920. No premiums were paid thereafter. By reason of the grace period the policy of insurance remained in full force and effect to and including the 31st day of August 1920.

Now then, the claim that the guardian makes for the veteran Mahoney was that as a result of physical and mental disabilities he became permanently and totally disabled on the 22nd day of May, 1920, and the Government denies and contests that. The Government also denies and contests that at any time during the period of insurance protection under the above mentioned policy of war risk yearly renewable term insurance he became permanently and totally disabled; in other words that is a definite denial up to the 31st day of August, 1920 or at any time subse- [382] quently if you find the insurance policy was in effect.

Now then, it is further claimed by the guardian for Mahoney that he was insane and mentally incompetent on May 22, 1920. The Government denies that. It is further contended that he has been continuously since that date insane or incompetent and that he was rated insane or incompétent by the Veterans Administration on or prior to the 3rd day of July, 1931, and each of those matters the Government denies.

Now reviewing the evidence I can say that he was rated insane or incompetent by the Veterans

Administration either on or prior to the 3rd day of July, 1931, but the other branch of that question will still be before you as to whether or not Mahoney was insane on the 3rd day of July, 1931 and before that time.

Then we come down to the question which I will submit to you: Was the insured insane on the 3rd day of July, 1931? Of course if the plaintiff is going to recover in this case he would also have to prove that he was totally and permanently disabled prior to that time, and that relates to the next question: Did the insured, that is, Mahoney, become totally and permanently disabled as the result of physical and mental disabilities May 22, 1920 or at any time when his war risk yearly renewable terms insurance was in full force and effect? Now those are the two questions you have to answer.

We will take up the general rules regarding that. [383] The plaintiff is bound to prove by a preponderance of the evidence, first, that the insured, Mahoney, was insane on and before July 3, 1931. Likewise in order to recover they must next prove that he was totally and permanently disabled on or before August 31, 1920. That means that the plaintiff has the burden of proof in that regard and must prove those matters by a preponderance of the evidence.

That sounds like a mysterious term, but it is not. It simply means the greater weight of the credible evidence, that is, the testimony and the written documents that have been produced before you.

When evidence is produced on one side of an issue which when fairly and impartially considered by you produces the stronger impression or has the greater weight or is more convincing as to its truthfulness, that side which produces it may be said to have sustained the particular issue by the preponderance of the evidence, when you consider all the evidence on that issue.

Now we will take up the first issue, because if you should find that the veteran, Mahoney, was not insane on the first critical date of July 3, 1931 then you need proceed no further in this case, because that will settle the controversy. The Government has set a limit on the bringing of these cases by legislation and that limit is raised if the person is found to be insane as of the date July 3, 1931, because the Government would not charge him with the responsibiilty of bringing [384] a case if he were insane.

Now what is insanity? Well, you know without definition that it is a deviation from the norm or the normal behavior of the human being, and in determining whether or not Mahoney was insane you will be governed in general by the things which I am about to say by way of definition. Insanity means derangement or disorder of the mind or of the emotions. The term "insane" implies every degree of unsoundness of mind. Insanity is a disease or abnormal condition which manifests itself in accentricities of conduct, speech, or appearance, that is to say, in the doing and saying of things which attract attention, because, judged by the com-

mon standards, they are deviations from that which is regular and usual, and acts, declarations, and conduct inconsistent with the character and previous habits of the person. Of course you realize that it is not all eccentricities which are chargeable as insanity. It is not all conduct and the doing and saying of things which attract attention which constitutes insanity. You know that of your own knowledge without my saying anything more about it. You realize the difference between a normal person who is eccentric and an insane person. Insanity is a mental, emotional manifestation of disease whereby the understanding is impaired or one or more of the faculties of the mind perverted, weakened, or destroyed. Of course you know this can be established by lay testimony as well as by expert testimony, because in our ordinary, normal [385] intercourse we recognize the difference betwen the insane person and the normal person.

By insanity it is not meant a total deprivation of reason, but only an inability from defect of memory and judgment caused by mental or emotional derangement to act with an intelligent apprehension of the nature and consequences of action.

To constitute insanity there must be such a deprivation of reason or judgment as to render the person incapable of understanding and acting with discretion as a normal person in the ordinary affairs of life, and want of sufficient capacity as a result of emotional derangement to transact ordinary business and to take care of and manage the person's property and affairs. I again call your attention

to the normal person that can't just exactly take care of himself owing to bad judgment, and so on. You realize, of course, that there is a great difference between that and insanity, which is abnormal behavior. Bad judgment is normal to some persons, perhaps, but no normal person is insane, and you can recognize it when you see it.

Now as I say, you will first take up the consideration of that question as to whether on that critical date, July 3, 1931, the insured, Mahoney, was insane. If you find he was insane on that date, as I have defined it to you, then you will take up the other question. If you find that he was not insane, that he was normal, although possibly diseased on that date, [386] you will proceed no further. You will just answer that question and bring in a verdict for the defendant, because under those circumstances he must have brought suit prior to that time if Mahoney himself was able to understand and appreciate things as a normal person, even though you find he used bad judgment in not continuing to pay the premiums.

Now we turn to the other question. The other question is a different one, although there are some of the elements which are applicable to each of these questions. The next question is: Was he permanently and totally disabled according to the definition that I shall give you on May 22, 1920 or on or before August 31, 1920? In that connection there are three essential facts which the plaintiff must prove in order to establish that the insured, Ma-

honey, is entitled to recover, or that the plaintiff is entitled to recover in his behalf. The first is that Mahoney was totally disabled. The second is that he was permanently disabled, and the third is that this permanent and total disability occurred and was present in the soldier on May 22, 1920 or on or before August 31, 1920 and at a date when his policy was alive. It has been agreed before that his policy was alive on August 31, 1920, and if he was then on that date proven to be permanently and totally disabled then plaintiff, the bank, would be entitled to recover, but plaintiff cannot recover if the disability of the soldier was total but not permanent on that date. [387]

On the other hand, the bank would not be entitled to recover if the soldier had permanent disability on that date which was partial in its nature. That is not total disability at that time, and both total and permanent disability must have occurred during the time the policy was in force and effect by the payments made before August 31, 1920.

In order that you shall fully understand this situation I shall now give you some definitions of types of disability. Total disability is any impairment of body or mind which renders it impossible for the disabled person to follow continuously any gainful occupation. Such a disability is deemed to be permanent if founded upon conditions which render it reasonably certain that it will continue during the life of the disabled person. This sort of disability does not mean incapacity to do any work at all. Disability is not confined to impair-

ment of strength or ability to pursue continuously his usual occupation, or any particular occupation, but it embraces such impairment as will disable him from following continuously any substantially gainful occupation. He might be disqualified or disabled from following one occupation, yet there might be other occupations which he could follow which would bring him substantial income or which could be regarded as substantially gainful occupations. Your problem in this case is to determine Mahoney's ability to work at the time of the lapse of the policy of insurance. That is the sole question that is presented to [388] you upon this branch of the case. Inability to perform hard labor is not the test. The measure of permanent and total disability is whether the infirmity in body or mind renders it impossible for a person to follow continuously any substantially gainful occupation.

The word "continuously" requires only a continuity which is reasonably regular in its character and not frequently interrupted by periods of inability to work to such an extent that the person does not have the ability to follow a substantially gainful occupation or to be employed to the satisfaction of a reasonable employer. It does not mean that the soldier should have worked every day or every week or every month, but it means that he should have the ability or capacity to follow some substantially gainful occupation to the satisfaction of a reasonable employer, or that he was able to follow some employment, pursuit, or occupation that could be depended upon for earning a livelihood.

In other words permanent and total disability does not mean helplessness or complete disability. In other words if a person should be bedridden and you should find that there were separate and distinct periods of temporary inability to perform any work at all, that would not necessarily spell total and permanent disability. Likewise, if you find that there is some partial disability which is not total in its nature you must remember that the definition requires total [389] disability.

It is true, of course, that a disease of the mind or the nerves or emotions may be just as preventative of a man's being employed at a gainful occupation as if he had his legs cut off. You know that insanity might be a permanent and total disability, and as I understand now the Government admits that at the present time this man is permanently and totally disabled by reason of his mental condition. That has nothing to do with his physical condition particularly or directly. But when you come to relate the present condition back, there the Government says, "There was a certain time in 1936 when we conceived that he was permanently and totally disabled, but we don't think that there was a period prior to that time when it can be established", and of course if that is the fact you can't relate it back without evidence or by speculation or conjecture. You must find some facts which are proven in the case which show that the permanent and total disability which exists now did actually, according to the facts that

you have before you, exist at the previous time.

If you don't find that the soldier became permanently and totally disabled until sometime after the policy lapsed then he cannot recover. In other words if you should determine that he became permanently and totally disabled sometime in 1936 for the first time then that would bar his recovery. The question is not whether he is totally and permanently [390] disabled now or whether he was totally and permanently disabled as of July 3, 1931 on this branch of the case, but whether he was totally and permanently disabled on or before the time his policy lapsed, and generally speaking it would lapse on August 31, 1920. It is true that if at that date he was permanently and totally disabled then he was relieved from the necessity of paying further premiums, but if he were not permanently and totally disabled he was in the same situation as anyone else. You can't continue a policy of insurance in force without continuing to pay the premium, and it is an admitted fact in this case that his grace period on the premiums expired August 31, 1920.

Even if his earnings were not substantial at any occupation, that would not necessarily determine the question, because the definition that controls this case is that permanent and total disability means that he is in such a condition that he cannot follow continuously a substantially gainful occupation, and that that is founded upon conditions which render it reasonably probable that it will continue throughout his life.

This policy of war risk insurance, however, does not guarantee success in any business undertaking, but it does insure him against a condition where he is not able, does not have the ability, to follow a substantially gainful occupation because of his physical and mental condition. [391]

It is important, of course, for you to consider the work record in the case insofar as there is any evidence of it, and I will not comment on the question of fact at all, but you have heard that he was employed during certain periods of this time and you should carefully consider the evidence to determine whether that falls within the definition that has been given.

Of course in connection with the work record I will repeat to you that disability may as well result from the condition of the mind and the nerves as from any other causes, and if a man is so inattentive or forgetful or unable to take care of himself as a result of mental or nervous disorders that he cannot be trusted to carry on simple forms of work without direction, he is as truly disabled from earning a livelihood as one who must refain from work on account of the condition of his vital organs. So in considering any work record that you find you may consider the question of whether he was employed through sympathy, as has been urged, or whether he was just carrying on an ordinary job like anybody else.

The plaintiff cannot recover in this case on the theory that the soldier was injured while he was in the army. There is evidence that tends to show

that the soldier did at one time during his service have a very serious injury, but that alone does not entitle the plaintiff to recover unless this condition was, or before the lapse of the policy became, connected with other matters such as the claimed mental dis- [392] order in this case, of sufficient severity to render it impossible for him to follow any substantially gainful occupation thereafter. If such conditions existed then the plaintiff would be entitled to recover. If the soldier had other disabilities which, taken in connection with the particular disability, the broken back, would render it impossible for him to follow continuously any substantially gainful occupation after August 31, 1920, plaintiff of course would be entitled to recover.

Now there is another situation. You have the opinions by physicians and psychiatrists who are skilled in matters concerning the human body and human mind and its reactions. These are things which we as laymen do not understand as well as those who have made studies of the particular types of conditions that result from physical and mental infirmities. These gentlemen were brought here to testify, and they have given testimony. You should give consideration to what they say on account of the fact that they have had peculiar training and experience with this type of disability, and you may use that evidence for what purposes you wish. There is one important factor for you to consider in that regard. If they say, "On a certain

day I saw a man", that is testimony as to a fact, but when they get into opinion evidence and say, "It is my belief or my opinion that he was insane on a certain date", then you are dealing with a different type of evidence. That [393] is what we call opinion testimony or opinion evidence. The physician or psychiatrist may upon the witness stand testify as to facts as do other witnesses, and when they do so you should judge their testimony on the same basis as you do that of any other witness, but when they testify upon matters of opinion, as to how long a disease existed or when it was acquired or what severity it had acquired at certain times, that is opinion upon their part and it is not binding upon you. You should judge such testimony in the light of your own good judgment and experience with affairs, and it is not binding upon you. It is true that if in the light of your experience with affairs you think that the doctor is right of course you may accept his testimony, but he is simply here to give you his opinion and you are not bound by it.

It has been mentioned in argument that you are not to be influenced by any sympathy or feeling which you have for the soldier or anyone involved in the case. It is true that the evidence has indicated that the soldier was injured while he was in the service, and while the United States owes him an obligation—which apparently it has recognized in certain respects, for instance, as regards vocational training—you are not to take that into

consideration in deciding this lawsuit. The soldier and the United States had a contract whereby he was insured against permanent and total disability. He kept that contract in force and effect by payments up to a [394] certain time, and he had the option, if he had wished or anybody had wished in his behalf, to keep those payments up, and the insurance could still be in effect up until the time that the finding was made. Now in that respect you have a right to consider his mental condition and the question as to whether he was permanently and totally disabled, because in either event if he was insane and thereby permanently and totally disabled he wouldn't have sense enough to keep his policy in effect, perhaps. Those are all questions for you, but you must remember that this is a litigation that should be decided as though it were between two private individuals and without respect to sympathy on one side or the other. You should not weigh it at all by any sympathy or feeling that you may have for any person in the case, nor the fact that the United States is one party to the contract.

You are the sole and exclusive judges of the facts in the case and the credibility of all the witnesses. Your power of judging the effect or value of evidence, however, is not arbitrary but must always be exercised with legal discretion and in subordination to the rules of evidence.

The direct evidence of one witness to whom you give full credit and belief is sufficient to establish any issue in this case. You are not bound to find

a verdict in conformity with the declaration of any number of witnesses which do not produce a conviction in your minds as against the testimony [395] of a less number or against a presumption or other evidence which does satisfy your minds.

Every witness is presumed to speak the truth. This presumption may be overcome, however, by the manner in which he testifies, the character of his testimony, or by evidence affecting his character or motives, or by contradictory evidence.

If you find that a witness has testified falsely in one material part of his testimony you may look with distrust upon the other evidence given by such witness, and if you find that a witness has testified wilfully false you will be at liberty to disregard all the testimony given by such witness unless corroborated by other evidence which you do believe.

Any fact in the case may be proven by direct or indirect evidence. Direct evidence is that which tends to prove a fact in dispute directly, without any inference or deduction, but which in itself if true conclusively establishes the fact. If a witness testifies to a transaction to which he has been an eyewitness, that is direct evidence. Indirect or circumstantial evidence is that which tends to establish a fact in dispute by proving another, and which though true, does not in itself conclusively establish the fact but affords an inference or a presumption of its existence.

Ladies and Gentlemen, the law requires me now to discuss the law of this case with counsel, and

if you will sit there for a few moments I will then be able to discharge you. [396] Counsel and the Court will retire.

Mr. Dillon: We have no exceptions.

Mr. Bynon: We have no exceptions, your Honor.

Mr. McGan: If your Honor please, by way of suggestion I would like to ask you to read this (tendering a paper to the Court).

The Court: There is a matter that has been called to my attention which I didn't entirely cover. There is some testimony in the record regarding vocational training, which you will consider to determine whether or not the payments received for vocational training and the manner of work done did constitute a substantially gainful employment. It is true that the veteran would be afforded this opportunity by the Government irrespective of whether it was their theory that he was gainfully employed or not, but you may take that into consideration in determining whether those payments throw doubt upon the question of whether he was able to be gainfully employed at that time.

You will have with you in the jury room the forms of verdict. There are three different forms here. The first is entitled "Special Interrogatories", and you will deal with these first. The first interrogatory is: "Do you find from the evidence that the insured, William V. Mahoney, was insane on July 3, 1931?" You will answer that "Yes" or "No". If you answer it "Yes" then you will proceed to determine other [397] questions in the

case. If you answer it "No" you will proceed no further, but immediately find a verdict for the defendant, the Government, according to the other form.

Then if you answer it "Yes" you may take up Interrogatory No. 2, which reads: "Do you find from the evidence that the insured, William V. Mahoney, was permanently and totally disabled May 22, 1920 or at any time when his War Risk Yearly Renewable Term Insurance was in full force and effect?" If you answer that "Yes" then you will proceed to find a general form of verdict for the plaintiff, and this general form of verdict for the plaintiff, omitting the formal portions, reads: "We, the jury, duly impaneled and sworn to try the above entitled cause, do find in favor of the plaintiff and against the defendant, and find that the insured, William V. Mahoney, was, on the 22nd day of May, 1920, and ever since has been totally and permanently disabled, and further find that the insured, William V. Mahoney, was, on the 3rd day of July, 1931, and ever since has been and is now, insane."

As I say, if you answer either of these questions in the negative, either as to whether he was insane on July 3, 1931 or the second, then you will find for the Government, and you will find this general form of verdict: "We, the jury in the above entitled cause, return our verdict for the defendant and against the plaintiff."

In all events both the interrogatories and the form [398] of general verdict must be signed by

your foreman alone. Since this case is tried in the Federal Court each of the determinations, whether to the questions or to the general verdict, must be unanimous, and therefore before you return these verdicts to the Court you will check up to see that you are in unanimous agreement upon every question submitted.

Swear the bailiff.

(The bailiff was sworn.)

The Court: Now Ladies and Gentlemen, since there are some of you who are anxious to get away I am going to allow you to retire and determine this problem for yourself. If you are not anxious to get away I shall immediately send you to lunch, but if you are anxious to get away you can determine these problems before you go out, and if not you may tell the bailiff at any time that you wish to be taken to lunch.

You may now retire in charge of the bailiff. I wouldn't try to settle it here.

(Thereupon the jury retired at 12:35 o'clock P.M., December 12, 1942.) [399]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edwin L. Holmes, hereby certify that I reported in shorthand the above entitled cause at the trial thereof, that I subsequently reduced to typewriting that portion of my shorthand notes covering the defendant's opening statement, the defendant's argument to the jury, and the Court's

instructions to the jury, and that the foregoing and hereto attached 38 pages, numbered from 1 to 38, both inclusive, constitute a full, true and accurate transcript of the defendant's opening statement, the defendant's argument to the jury, and the Court's instructions to the jury, so taken by me in shorthand as aforesaid.

Dated at Portland, Oregon, this 6th day of May, 1943.

EDWIN L. HOLMES
Reporter.

[Endorsed]: Filed May 10, 1943. [400]

And Afterwards, to wit, on Monday, the 17th day of May, 1943, the same being the 67th Judicial day of the Regular March, 1943, Term of said Court; present the Honorable James Alger Fee, United States District Judge, presiding, the following proceedings were had in said cause, to wit: [402]

[Title of District Court and Cause.]

ORDER EXTENDING TIME FOR FILING THE RECORD ON APPEAL

Upon application of the defendant, the United States of America, and for good cause shown, and being fully advised in the premises,

It Is Hereby Ordered, and this does order that the time for filing the record on appeal herein and docketing this action in the Circuit Court of

Appeals for the Ninth Circuit is extended to and including the 12th day of June, 1943.

Dated this 17th day of May, 1943.

JAMES ALGER FEE
Judge.

[Endorsed]: Filed May 17, 1943. [403]

CERTIFICATE OF CLERK

United States of America
District of Oregon—ss.

I, G. H. Marsh, Clerk of the District Court of the United States for the District of Oregon, do hereby certify that the foregoing pages numbered from 1 to 401 inclusive, constitute the transcript of record on appeal from a judgment of said Court in a cause therein numbered Civil 923, in which Portland Trust and Savings Bank, a corporation, Guardian of the Estate of William V. Mahoney, incompetent, is plaintiff and Appellee, and United States of America, is defendant and Appellant; that said transcript has been prepared by me in accordance with the designations of contents of the record on appeal filed therein by appellant and appellee and in accordance with the rules of Court; that I have compared the foregoing transcript with the original record thereof and that the foregoing is a full, true and correct transcript of the record and proceedings had in said Court in said cause, as the same appear of record and on file at my office and in my custody, in accordance

with the said designations. There is not in the record of said cause any opinion on the motion to set aside verdict, and for judgment for defendant.

I further certify that the cost of the foregoing transcript is $5.00 for filing Notice of Appeal, and $63.40 for comparing and certifying the within transcript, making a total of $68.40, which has not been paid by appellant but is a constructive charge against the United States.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at Portland, in said District, this 12th day of May, 1943.

[Seal] G. H. MARSH,
Clerk. [404]

[Endorsed]: No. 10458 United States Circuit Court of Appeals for the Ninth Circuit United States of America, Appellant, vs. Portland Trust and Savings Bank, a corporation, Guardian of the Estate of William V. Mahoney, Incompetent, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Oregon.

Filed June 11, 1943.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 10458

UNITED STATES OF AMERICA,
Appellant

vs.

PORTLAND TRUST AND SAVINGS BANK, a Corporation, Guardian of the Estate of WILLIAM V. MAHONEY, Incompetent,
Appellee.

STATEMENT OF POINTS UPON WHICH THE APPELLANT INTENDS TO RELY ON APPEAL.

Comes Now the appellant, the United States of America, and hereby specifies as the points upon which it intends to rely on its appeal from the judgment in the above entitled action the following:

I.

That the Court erred in denying and over-ruling defendant's Motion to dismiss made at the close of the plaintiff's case on each and all of the grounds as stated therein. Page 266 certified transcript.

II.

That the Court erred in denying and over-ruling defendant's Motion to dismiss made at the close of all the evidence on each and all of the grounds as stated therein. Page 358 certified transcript.

III.

That the Court erred in denying defendant's Motion for a directed verdict made at the close of all the evidence on each and all of the grounds as stated therein. Page 358 certified transcript.

IV.

That the Court erred in denying defendant's Motion to set aside verdict and judgment, and for judgment for the defendant, in accordance with its motion to dismiss and its motion for a directed verdict, or, in the alternative, for a new trial on each and all of the groups as stated therein.

Motion, page 23 certified transcript.

Order denying motion, page 27 certified transcript.

Dated this 1st day of June, 1943.

CARL C. DONAUGH,
United States Attorney.
JAMES H. HAZLETT,
Assistant United States Attorney.
FRANCIS J. McGAN,
Attorney, Department of Justice.
(Attorney for Defendant.)

Service of the above and foregoing Statement of points upon which the appellant intends to rely on

appeal, and receipt of a true and correct copy thereof, acknowledged this 1st day of June, 1943.

BYNON & MEINDL,
By GERALD J. MEINDL,
(Attorney for Plaintiff.)

[Endorsed]: Filed Jun. 12, 1943.

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED

Comes Now the appellant, the United States of America, and designates as the portions of the record in the above entitled cause to be contained in the printed record on appeal the following:

1. Complaint, with the date of filing endorsed thereon. Page 2 certified transcript.
2. Answer. Page 7 certified transcript.
3. Amended Pre-Trial Order. Page 10 certified transcript.
4. Special interrogatories submitted to the jury with the answers of the jury recorded thereon. Page 15 certified transcript.
5. Verdict. Page 17 certified transcript.
6. Judgment, with the date of filing and entry endorsed thereon. Page 19 certified transcript.
7. Motion to set aside verdict and judgment, and for judgment for the defendant, in accordance with its motion to dismiss and its motion for a directed verdict, or, in the alternative, for a new

trial, with the date of filing endorsed thereon. Page 23 certified transcript.

8. Opinion of the Court, if any has been filed, on defendant's Motion to set aside verdict and judgment, and for judgment for the defendant, in accordance with its motion to dismiss and its motion for a directed verdict, or, in the alternative, for a new trial. Page none filed certified transcript.

9. Order denying defendant's Motion to set aside verdict and judgment, and for judgment for the defendant, in accordance with its motion to dismiss and its motion for a directed verdict, or, in the alternative, for a new trial, with the date of filing endorsed thereon. Page 27 certified transcript.

10. Transcript of the evidence and proceedings had at the trial except the instructions of the Court, the opening statement of defendant's counsel to the jury, and excepting also the arguments of defendant's counsel to the jury. Pages 39 to 358 inclusive certified transcript.

11. Notice of appeal, with the date of filing endorsed thereon. Page 29 certified transcript.

12. Statement of points upon which the defendant intends to rely on appeal filed in the District Court. Page 31 certified transcript.

13. Designation by defendant of contents of record on appeal filed in the District Court. Page 34 certified transcript.

14. Clerk's Certificate. Page 402 certified transcript.

15. Statement of points upon which the appellant

intends to rely on appeal filed in the Circuit Court of Appeals.

16. Designation of the parts of the record to be printed filed by appellant in the Circuit Court of Appeals.

Dated this First day of June, 1943.

CARL C. DONAUGH
United States Attorney
JAMES H. HASLETT
Assistant United States Attorney
FRANCIS J. McGAN
Attorney, Department of Justice
Attorneys for Defendant.

Service of the above and foregoing Designation of record on appeal, and receipt of a true and correct copy thereof, acknowledged this 1st day of June, 1943.

BYNON & MEINDL
By GERALD J. MEINDL
Attorneys for Plaintiff.

[Endorsed]: Filed June 12, 1943

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION BY APPELLEE OF ADDITIONAL PARTS OF THE RECORD TO BE PRINTED

Comes Now the appellee, Portland Trust and

Savings Bank, a corporation, Guardian of the Estate of William V. Mahoney, incompetent, and designates as the parts of the record in the above entitled cause to be contained in the printed record on appeal, in addition to those parts designated by the appellant, the following:

1. Designation by plaintiff of additional matters to be included in the record on appeal filed in the District Court. Page 37, certified transcript.

2. Part of defendant's counsel's opening statement to the jury. Page 362 through line 16 on page 364, with words ending "he had on the policy.", certified transcript.

3. Part of defendant's counsel's argument to the jury at the close of the testimony. Page 367 through line 15 on Page 368, ending with words "his old home at Minot", certified transcript.

4. Court's instructions to the jury. Page 380 to 399, inclusive, certified transcript.

Dated this 3rd day of June, 1943.

ALLAN A. BYNON
GERALD J. MEINDL
Attorneys for Appellee.

Service of the above and foregoing Designation of Additional record on appeal and receipt of a true and correct copy thereof acknowledged this 3rd day fo June, 1943.

JAMES H. HAZLETT
Of Attorneys for Appellant.

[Endorsed]: Filed June 11, 1943

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION BY APPELLANT OF ADDITIONAL PARTS OF THE RECORD TO BE PRINTED

Comes Now the appellant, United States of America, and designates as additional parts of the record in the above entitled cause to be contained in the printed record on appeal, in addition to those parts heretofore designated by the appellant and the appellee, the following:

1. The opening statement of defendant's counsel to be printed in its entirety.

2. Arguments of defendant's counsel to the jury to be printed in their entirety.

Dated this 21st day of June, 1943.

CARL C. DONAUGH
United States Attorney
JAMES H. HAZLETT
Assistant United States Attorney
FRANCIS J. McGAN
Attorney, Department of Justice
Attorneys for Appellant

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT OF SERVICE

Emma Valk, being first duly sworn on oath, deposes and says: That she is a citizen of the United States and a resident of the State of Montana, and is over the age of eighteen years, and not a party to or interested in the above-entitled action; that she served a copy of the Designation by appellant of additional parts of the record to be printed in the above-entitled cause on Bynon & Meindl, attorneys for the plaintiff herein, by depositing in the United States Post Office at Butte, Montana, on the 21st day of June, 1943, said copy securely sealed in an envelope addressed to Bynon & Meindl, Attorneys at Law, 1406 American Bank Building, Portland, Oregon and sent under the Government frank, no postage thereon being required; that the said Portland, Oregon is the place of residence of the said attorneys; that on the said date there was a regular communication by United States mail between said Portland, Oregon and said Butte, Montana.

EMMA VALK

Subscribed and sworn to before me this 21st day of June, 1943.

[Seal] HAROLD D. ALLEN
Deputy Clerk, U. S. District Court, District of Montana.

[Endorsed]: Filed June 23, 1943

[Title of Circuit Court of Appeals and Cause.]

AMENDMENT TO DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED

Comes Now the appellant, the United States of America, and files this amendment to the Designation of the parts of the record to be printed heretofore filed herein and designates the following portions of said record to be omitted from the printed record on appeal:

1. Omit all of the language, words and figures contained in and appearing in the last eleven lines on page 39 of the certified transcript.

2. Omit all of the language, words and figures contained in and appearing on pages 40, 41 and 42 of the certified transcript.

3. Omit all of the language, words and figures contained in and appearing in the first twenty-eight lines on page 43 of the certified transcript, down to and including the words, "Mr. Meindl: Yes, your Honor."

4. Omit all of the language, words and figures contained in and appearing on page 106 of the certified transcript.

5. Omit all of the language, words and figures contained in and appearing in the last eighteen lines on page 107 of the certified transcript, beginning with the words, "United States of America".

6. Omit all of the language, words and figures contained in and appearing on pages 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123 and 124 of the certified transcript.

7. Omit all of the language, words and figures contained in and appearing in the first eight lines on page 125 of the certified transcript.

8. Omit all of the language, words and figures contained in and appearing in the last three lines on page 126 of the certified transcript.

9. Omit all of the language, words and figures contained in and appearing on pages 127, 128, 129 and 130 of the certified transcript.

10. Omit all of the language, words and figures contained in and appearing in the first twenty lines of page 131 of the certified transcript.

11. Omit all of the language, words and figures contained in and appearing on pages 140, 141, 142, 143, 144, 152, 153, 154, 155, 156, 157, 158 and 159 of the certified transcript.

12. Omit all of the language, words and figures contained in and appearing in the first eight lines on page 164 of the certified transcript.

13. Omit all of the language, words and figures contained in and appearing on page 258 of the certified transcript, beginning after question 20. with the words, "If Patient Is of Foreign Birth" and ending with the words, "(f) If ever confined in an institution where and when?".

14. Omit all of the language, words and figures contained in and appearing on page 263 of the certified transcript.

15. Omit all of the language, words and figures contained in and appearing on pages 303, 304, 305 and 306 of the certified transcript.

16. Omit all of the language, words and figures contained in and appearing on page 334 of the certified transcript, beginning with the twelfth line with the words, "Gynecological History:" to and including the twenty-seventh line, beginning with the words, "Special Remarks:".

17. Omit all of the language, words and figures contained in and appearing on page 335 of the certified transcript, beginning with the word, "Perineum" on line twenty-three and ending with the words, "Special remarks;" on line twenty-seven.

18. Omit all of the language, words and figures contained in and appearing in the first eleven lines on page 336 of the certified transcript, down to and enclosing the words, "Chest Back".

19. Omit all of the language, words and figures contained in and appearing on page 338 of the certified transcript.

20. Omit all of the language, words and figures contained in and appearing on page 356 of the certified transcript, excepting therefrom the first four lines of said page.

Appellant designates the following to be contained in the printed record on appeal:

1. Order of the District Court extending the time for filing the record herein in the Circuit Court

of Appeals and docketing the said cause to and including the 12th day of June, 1943.

Dated this 1st day of July, 1943.

CARL C. DONAUGH
United States Attorney
JAMES H. HASLETT
Assistant United States Attroney
FRANCIS J. McGAN
Attorney, Department of Justice
Attorneys for Appellant.

[Title of District Court and Cause.]

AFFIDAVIT OF SERVICE

Emma Volk, being first duly sworn on oath, deposes and says: That she is a citizen of the United States and a resident of the State of Montana, and is over the age of eighteen years, and not a party to or interested in the above-entitled action; that she served a copy of the Amendment to designation of the parts of the record to be printed and an uncertified copy of pages 38 to 358, inclusive, of the transcript in the above-entitled cause on Bynon and Meindl, Attorneys for the plaintiff herein, by depositing in the United States Post Office at Butte, Montana, on the 1st day of July, 1943, said copies securely sealed in an envelope addressed to Bynon and Meindl, Attorneys at Law, 1431 American Bank Building, Portland, Oregon

and sent under the Government frank, no postage thereon being required; that the said Portland, Oregon is the place of residence of the said attorneys; that on the said date there was a regular communication by United States mail between said Portland, Oregon and said Butte, Montana.

EMMA VALK

Subscribed and sworn to before me this 1st day of July, 1943.

[Seal] HAROLD D. ALLEN
Deputy Clerk, U. S. District Court, District of Montana.

[Endorsed]: Filed July 7, 1943.